

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Criminal Case No.
) 1:17-cr-00027-JPJ-PMS-1
vs.)
)
JOEL A. SMITHERS,)
)
Defendant.)

TRANSCRIPT OF JURY TRIAL - DAY 3
HONORABLE JUDGE JAMES P. JONES PRESIDING
WEDNESDAY, MAY 1, 2019

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Proceedings taken by Certified Court Reporter and transcribed
using Computer-Aided Transcription

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1 (Proceedings commenced at 9:04 a.m.)

2 THE COURT: Good morning, ladies and gentlemen.

3 Is there anything we need to take up before we
4 proceed with the presentation of evidence?

5 MR. WILLIAMS: Your Honor, if I may. My client has
6 actually just --

7 THE COURT: Yes, sir, if you wouldn't mind coming to
8 the lectern, please.

9 MR. WILLIAMS: I'm sorry, Your Honor.

10 Your Honor, my client has just handed me something,
11 I didn't have a chance to read it. I'd ask that it be filed.

12 I think he's just asking, I guess, that I be removed
13 as counsel.

14 THE COURT: Why don't you show it to opposing
15 counsel.

16 MR. WILLIAMS: Your Honor, may I approach?

17 THE COURT: You may. If you'll hand it to the
18 clerk.

19 Well, I'll ask the clerk to file this.

20 MR. WILLIAMS: All right.

21 Your Honor, I just -- for the record, I would make a
22 motion to withdraw based upon my client's recommendation.

23 THE COURT: I'm going to deny it for the same
24 reason. I believe, based on this document and the totality of
25 the case, that the defendant is not being accurate in his

1 complaints. He is, for whatever reason, whether to delay or
2 otherwise derail the proceedings, is raising these issues
3 without good reason. And I believe counsel has indicated, and
4 so far has indicated, that he's prepared and he's doing an
5 adequate job in representation of his client. And there's
6 nothing in the midst of this trial so far after the several
7 days, that would cause me to change my mind.

8 MR. WILLIAMS: All right. Thank you, Your Honor.

9 THE COURT: All right. We'll have the jury in.

10 (Proceedings held in the presence of the jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 Good to see you this morning. Hope you had a good evening.

13 We're ready to go.

14 And, Mr. Lee, you may call your next witness.

15 MR. LEE: Thank you, Judge.

16 Your Honor, the Government calls Lora Kicklighter.

17 THE CLERK: If you'll raise your right hand.

18 Do you solemnly swear that the testimony you're
19 about to give in this case shall be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes, I do.

22 **LORA KICKLIGHTER,**

23 Called as a witness herein by the Government, having been
24 first duly sworn, was examined and testified as follows:

25 ///

DIRECT EXAMINATION

BY MR. LEE:

Q. Good morning.

A. Good morning.

Q. Ma'am, it's difficult to hear in here. So I'm going to ask you to pull over -- pull that microphone over. Try to speak directly into it.

A. That better?

Q. It is better, thank you.

Would you please introduce yourself to the members of the jury.

A. My name is Lora Kicklighter.

Q. And for the purposes of the court reporter, could you spell your last name.

A. K-i-c-k-l-i-g-h-t-e-r.

Q. Ms. Kicklighter, what community have you been residing in most of your life?

A. West Virginia.

Q. Whereabouts?

A. In Nicholas County -- Nicholas County and Fayette County.

Q. Okay. It's pretty obvious, Ms. Kicklighter, you're in custody now, aren't you?

A. Yes, sir.

Q. And are you serving an active federal sentence based upon a felony conviction?

1 A. Yes, sir.

2 Q. What sentence are you serving?

3 A. Time-wise?

4 Q. Yes.

5 A. 57 months.

6 Q. So just under five years.

7 A. Yes.

8 Q. Was that pursuant to a plea of guilty to a charge of
9 conspiracy to distribute oxycodone?

10 A. Yes.

11 MR. LEE: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MR. LEE:

14 Q. Ms. Kicklighter, I'm going to hand you what's been marked
15 as Government's Exhibit 97. Do you recognize what that is?

16 A. Yes.

17 Q. What is that?

18 A. This is my plea agreement that I signed.

19 Q. All right. And is that from the Eastern District of
20 Kentucky?

21 A. Yes.

22 Q. All right.

23 MR. LEE: Your Honor, I move for the admission of
24 Government's Exhibit 97.

25 THE COURT: It will be admitted.

1 (Government's Exhibit 97 received.)

2 BY MR. LEE:

3 Q. While we're working on getting the technology, we'll talk
4 about your plea agreement a little bit; okay?

5 A. Okay.

6 Q. So you've already been sentenced in the Eastern District
7 of Kentucky and are serving your sentence; correct?

8 A. Yes, sir.

9 Q. All right. Have you been promised anything for your
10 cooperation today?

11 A. No.

12 Q. Are you expecting any sort of consideration or benefit
13 from your cooperation?

14 A. No, none whatsoever.

15 Q. All right. Are you familiar with what a Rule 35 motion
16 for downward departure or for reduced sentence is?

17 A. No.

18 Q. Okay. Are you aware that at times, if you cooperate with
19 the Government, even after you've been sentenced, that your
20 sentence can be reduced if the judge in your case decides it's
21 appropriate?

22 A. Yes, sir.

23 Q. Okay. Are you hoping that that happens based upon your
24 testimony today?

25 A. Well, yeah. I mean, nobody wants to be locked up. But I

1 hope it helps, you know, a bigger way.

2 Q. Okay. In fact, you've got some programs that are at the
3 federal correctional institution that you're sentenced to that
4 you want to pursue that will take up a vast majority of the
5 time that you're supposed to spend in prison; is that correct?

6 A. Yes.

7 Q. And what are those programs?

8 A. Right now -- I was about to start RDAP. It's a
9 residential drug treatment program. It takes ten months, or
10 900 hours. You can get upwards of 12 months off your
11 sentence, six months' half-way time. But I've been delayed on
12 that, so -- to come here. But, yeah, so I'm hoping to get
13 back and do that program.

14 Q. Okay. But, fair to say, even though nothing has been
15 promised to you, you've already been sentenced, if you get a
16 reduction for your cooperation, that's something you would be
17 happy about; correct?

18 A. Oh, yes. Yes.

19 Q. All right. Do you know what could derail any chance of
20 getting any sort of reduction or any sort of benefit from your
21 cooperation?

22 A. No.

23 Q. What about telling a lie or not being truthful today?

24 A. I'm really not familiar with -- I mean. I mean, I'm sure
25 it would be some kind of trouble, you know, you have to be

1 truthful. So I'm just here to tell the truth, you know.

2 Q. Fair to say, common sense, if you don't tell the truth
3 when you're testifying today, there's no chance you're going
4 to get anything. In fact, you might get in more trouble.

5 A. Right. Yeah. And I don't want that.

6 Q. Okay. Ms. Kicklighter, your plea agreement details the
7 conduct that you were involved in that led to your charges; is
8 that correct?

9 A. Yes.

10 Q. In fact, it specifically discusses that between June and
11 July -- June of 2015 and July of 2016 you were involved with
12 Darryl Williams in operating crews to travel to see
13 Dr. Smithers to get oxycodone; is that correct?

14 A. Yes, sir.

15 Q. And that you chose or you went to Dr. Smithers because
16 patients received large prescriptions for oxycodone and other
17 controlled substances with little, if any, physical
18 examination or other type of subjective testing measures?

19 THE COURT: Yes, sir.

20 MR. WILLIAMS: I would object to speculation. I
21 think, unless she has personal knowledge of anything other
22 than her own self, I certainly would object to her speculating
23 what anybody else might have done or whether it would be
24 hearsay testimony she would be speaking on; somebody speaking
25 to her.

1 THE COURT: Well, Mr. Lee, maybe you better --
2 rather than relying on what it says in the plea agreement, ask
3 the witness herself what -- what on facts she was doing.

4 MR. LEE: I'll afford documents, Your Honor. But
5 I'll lay a foundation if the Court would prefer that.

6 BY MR. LEE:

7 Q. Ms. Kicklighter, I guess just to get right to the heart
8 of the matter, what was the criminal conduct that you pled --
9 that caused you to plead guilty? What did you do to get your
10 charges and that led you to plead guilty?

11 A. I participated in going to a doctor that -- for starters,
12 the reason I went is because I knew, you know, you could get
13 strong medication without having an MRI or any of that stuff.
14 It's kind of like the way they did in Florida a few years back
15 with what we call the pill mills. I went and got medication
16 without -- I mean, without any kind of physical exam or
17 bringing medical records, anything like that, and got a
18 prescription for pain pills. I'm an addict, so that's why I
19 went, because I knew I could get opiates.

20 Q. And who was that doctor?

21 A. Dr. Joel Smithers.

22 Q. Is he in the courtroom today?

23 A. Yes, sir.

24 Q. Can you please identify him for the jury and identify
25 what he's wearing.

1 A. Yes. He has a gray suit and a blue tie.

2 Q. And is he seated at the counsel -- which counsel table is
3 he seated at, the one to your left or the one to your right?

4 A. The one to my right.

5 MR. LEE: Your Honor, I'd ask the record reflect
6 she's identified the defendant.

7 THE COURT: It will so reflect.

8 BY MR. LEE:

9 Q. And, Ms. Kicklighter, during the time you were going to
10 see Dr. Smithers, were you the only one that was going that
11 you were associating with or were there more people?

12 A. Do you mean physically I was by myself? Is that what
13 you're asking?

14 Q. Well, let me rephrase the question.

15 A. Okay.

16 Q. You're from a community in West Virginia; is that
17 correct?

18 A. Yes. I was living in Kentucky when I went to
19 Dr. Smithers.

20 Q. Okay. What part of Kentucky were you living?

21 A. Pike County, Eastern District.

22 Q. And were you married at the time?

23 A. No.

24 Q. Did you have a boyfriend?

25 A. Yes.

1 Q. Who was your boyfriend?

2 A. Darryl Williams.

3 Q. Okay. Did you and Darryl Williams facilitate other
4 people going to see Dr. Smithers to obtain prescriptions?

5 A. Yes.

6 Q. And how many other people were there?

7 A. I didn't know everybody that was going. I didn't know
8 the whole extent of it, but I knew there was probably more
9 than 20 people going.

10 Q. Okay. What were the names of some of those people?

11 A. Michael Bowe, Michael Robinette. It's been so long, I
12 forget. Sam Hubbard. There was just so many. Everybody that
13 I met and knew pretty much in that area was going.

14 Q. Okay. And how did -- or what was the arrangements
15 between those people who were going to see Dr. Smithers and
16 yourself or Darryl Williams?

17 A. Darryl would pay for everything; the doctor visit, having
18 the medication filled, the trip, any kind of expenses. And
19 then when the prescriptions were filled, Darryl would receive
20 half of them, and then they would have the other half for
21 payment for paying for everything, except for me. I didn't --
22 you know, I was just doing it to feed my habit, you know, so.

23 Q. And what was Darryl doing with the pills?

24 A. Selling them.

25 Q. How did you -- I know you said you were familiar with

1 other -- I think what you called pill mills; is that right?

2 A. Mm-hmm. That's what they were called, yes.

3 Q. Okay. In fact, you've had a long history of drug abuse?

4 A. Yes.

5 Q. And you've been convicted in the past of other
6 drug-related offenses; is that correct?

7 A. I've been charged, not convicted. This is the first time
8 I've been convicted.

9 Q. Okay. You were charged in Florida back in 2010 with drug
10 offenses there; is that correct?

11 A. Yes, sir.

12 Q. Okay. Those involved prescription fraud and opiates; is
13 that correct?

14 A. Yes, sir.

15 Q. Was that based upon your involvement with the pill mills
16 in Florida?

17 A. Yes.

18 Q. Okay.

19 A. It was -- it was really easy to go down there and go to a
20 doctor office that would write prescriptions. And normally
21 you would get them filled at the pharmacy in the same
22 building.

23 Q. Okay. And you said you had a drug addiction when you
24 sought out Dr. Smithers's office; correct?

25 A. Yes.

1 Q. Okay. How did you find out about Dr. Smithers's office?

2 A. Someone had told -- someone had found out about it and
3 told Darryl. And so he went. And then he seen that it was,
4 like, the run of the mill kind of thing, you just --

5 MR. WILLIAMS: Your Honor -- sorry. I would have an
6 objection to speculation what Darryl Williams knew or was
7 thinking.

8 MR. LEE: I'll rephrase the question, Your Honor.

9 THE COURT: All right.

10 BY MR. LEE:

11 Q. And did Darryl Williams tell you about his experience at
12 Dr. Smithers's office and what he wanted to do once he'd
13 identified Dr. Smithers?

14 A. Yes.

15 Q. Okay. What did he tell you?

16 MR. WILLIAMS: Your Honor, if I might, I might
17 object as to hearsay with respect to that.

18 MR. LEE: If I may, Your Honor, I believe this is a
19 statement in furtherance of a conspiracy made by a
20 co-conspirator.

21 THE COURT: Very well. I will admit it on that
22 basis and overrule the objection.

23 BY MR. LEE:

24 Q. My question was: What did Darryl tell you about his
25 experience at Dr. Smithers's and what he wanted to do moving

1 forward?

2 A. He said that that's a good doctor. You know, all we have
3 to do is pay the money, he'll write good scripts. You don't
4 even have to have a MRI or medical records or anything. It's
5 not like -- in these circumstances it's not like you look in
6 the yellow pages to find a doctor for what you need treated
7 for, it's word of mouth. You know, people go and that's
8 how -- but, yeah, he said, you know, we could start going to
9 this doctor. He's just getting started. He was in Beaver,
10 West Virginia. So the next month I went.

11 Q. All right. Let me back up a little bit. You talk about
12 for this kind of a doctor you can't find it in the yellow
13 pages, you're looking for word of mouth. What were you
14 looking to get from a doctor such as Dr. Smithers?

15 A. Pain pills, opiates, roxies. You didn't want to get,
16 like, the weaker pills, the hydrocodones, because at that
17 point everybody was already past those, and doctors were
18 writing a lot stronger medication.

19 Q. Okay. When you say "word of mouth," what types of people
20 were talking about Dr. Smithers or doctors like him?

21 A. Addicts.

22 Q. And, as far as seeking treatment, were you seeking any
23 treatment for any medical issue from Dr. Smithers?

24 A. At that time I was just hoping to get a prescription of
25 pills to feed my habit. I was more trying to feed my habit

1 than, you know, get treatment for any -- I mean, I had, like,
2 some nerve damage. But I found out since then that I can stop
3 the pain by simply stretches, you know, so.

4 Q. Are you on any opiates now?

5 A. No. No. Not since June 2016.

6 Q. And who -- how did you find out that stretching would
7 take away whatever pain you've had?

8 A. It was actually a doctor at a pill mill.

9 Q. Okay.

10 A. That, you know -- because I told him, I said, you know,
11 even though I'm taking such strong opiates, I still have pain.
12 And he showed me a stretch that I could do. And I still do it
13 today when my leg starts to hurt.

14 Q. What doctor was that?

15 A. I don't remember. It's, you know -- I mean, like I said,
16 I've been abusing opiates since 2003.

17 Q. Okay. And we'll talk more about the doctors that you've
18 been to in a minute.

19 So, you said the first time you went to see
20 Dr. Smithers was in Beaver, West Virginia?

21 A. Yes, sir.

22 Q. What was the name of the clinic there, if you can recall?

23 A. I don't think it had a name. It was on Airport Road.
24 And it was just a brick building, kind of looked like nothing
25 was there.

1 Q. Describe your first appointment with Dr. Smithers. What
2 happened?

3 A. I walked in and it had a, you know, a waiting room and,
4 like, a receptionist area, but there was no receptionist. So
5 Darryl told me just to go in and, you know, sit down. And
6 then I was waiting. At that time Dr. Smithers come out, asked
7 me my name, and then we went back in the office, talked a
8 little bit about what was wrong with me. And I specifically
9 wanted a pain pill called "Opanas," which are like the
10 strongest ones on the market right now. And he said that he
11 could write me roxies right now and then when we had a
12 better-established relationship he could write me the Opanas.

13 I didn't have any medical records with me, no MRI,
14 nothing, because I already was told I don't need any of that.
15 So it was, you know, it -- you know, you could just tell.
16 When you've been to different pill mills and stuff, you could
17 just tell how it was. So it was easy to get a prescription.

18 Q. And you said that was in Beaver, West Virginia?

19 A. Mm-hmm.

20 Q. Where was your next appointment with Dr. Smithers?

21 A. Martinsville, Virginia.

22 Q. Okay. Do you know why the clinic -- why you originally
23 went to Beaver, West Virginia, then all of a sudden had to go
24 to Martinsville?

25 A. Given my past experience with doctors that -- you know,

1 you could show -- one month you can go, and you can show up
2 the next month for the appointment and they're closed down --

3 MR. WILLIAMS: Your Honor, I'd have an objection. I
4 think she's -- I think if she testifies to personal knowledge.
5 But I think if she's saying that she typically understands
6 this might be something, I don't think that would be
7 admissible. I think that's speculation.

8 THE COURT: She said, "Given my past experience with
9 doctors." That's how she started her phrase.

10 MR. WILLIAMS: What I'm saying is, I think that
11 that's indicating that she doesn't have a personal knowledge
12 of why Dr. Smithers left. She would be basing it on some kind
13 of a past history which --

14 THE COURT: Well, I'll overrule the objection.

15 Go ahead.

16 BY MR. LEE:

17 Q. Please continue.

18 A. We were -- most doctors, if -- what the terminology we
19 use, if it gets a little hot for them, they move locations.
20 And that's just what everybody assumed. I mean, every pain
21 doctor or pill mill that I have been to has been shut down.
22 And, you know, like I said, you just show up and there's
23 nobody there.

24 Q. How -- okay. How did you find out that Dr. Smithers had
25 moved to Martinsville?

1 A. He -- he told some of the patients that had -- you know,
2 that was going that the next visit would be in Martinsville,
3 Virginia.

4 Q. Okay. So y'all just -- how did you know where to go or
5 how to get an appointment?

6 A. Darryl had the address. I think Dr. Smithers had maybe
7 text him the address or -- so.

8 Q. Okay. When you went to Dr. Smithers's office in
9 Martinsville for that next visit, did -- what happened?

10 A. I guess our relationship was a little more established,
11 because he wrote me the roxy 30s and also 90 Opana 40s.

12 Q. You said that was, in your experience, basically the
13 strongest opiates you could get?

14 A. Yeah.

15 Q. Okay. And when you specifically asked Dr. Smithers at
16 that first visit for him to write the strongest opiate you
17 could get, did he question your motives or go into any
18 problems there might be with you asking for that out of the
19 blue?

20 A. No. He just said that he couldn't write 'em on our first
21 visit, but after we got our relationship a little more
22 established -- and what I assumed was that I had to go to him
23 a couple times before, you know, I could get what I consider
24 the good pills at that time.

25 Q. Okay. Did you ever have trouble filling your

1 prescriptions --

2 A. Yes.

3 Q. -- that were written by Dr. Smithers?

4 A. Yeah. That's always kind of a hang up. And it --

5 Dr. Smithers had text different pharmacies to our phone and
6 recommend that we could go to.

7 Q. And what pharmacies were those?

8 A. They were, like, your independent -- you know, not like
9 CVS or Rite-Aid or anything. They were -- one was in Buffalo,
10 West Virginia. It was called Buffalo Pharmacy. There was
11 another one in West Virginia that I went to a lot. Poca. I
12 think it's called Poca Drugs. When you find a pharmacy that,
13 you know, they want cash, then, you know that's a pharmacy
14 that'll fill without questioning, except for Buffalo.
15 Buffalo, if you'd come in with a prescription for 90 Opanas,
16 he would only give you 60 of 'em, but they would charge you
17 the \$1400 for 90 of 'em.

18 Q. Okay. So the pharmacy would charge you for the full
19 prescription, but they'd short you 30 pills?

20 A. Yeah.

21 Q. Do you know what they were doing with the other 30 pills?

22 And I don't want to you assume or speculate, just if
23 you know.

24 A. Right. First-hand knowledge, I don't know. But I had
25 heard that, you know, that they were --

1 THE COURT: Don't testify to what you heard.

2 THE WITNESS: Okay. No, I don't know.

3 BY MR. LEE:

4 Q. Okay. And you said for those -- those types of
5 pharmacies that wouldn't question your prescription, wouldn't
6 question where you were from and would fill Dr. Smithers's
7 prescriptions, they were all cash; is that correct?

8 A. Mm-hmm. Yes.

9 Q. Okay. And Dr. Smithers, how did you have to pay him?

10 A. Cash.

11 Q. Okay. Did he also take credit cards?

12 A. Yeah, credit cards or cash.

13 Q. Would he allow insurance? Medicaid? Anything like that?

14 A. Not that I was aware of.

15 Q. And as things progressed through the next year, in
16 essence, June to July of '16 -- June of '15 to July '16, just
17 tell the members of the jury how things would operate with
18 Darryl and you and the crew of folks that were going to
19 Dr. Smithers.

20 A. Well, they would -- there would be several people going
21 at one time to the doctor. And then they would come back, and
22 they would bring Darryl the prescriptions. Darryl would send
23 one of our other co-defendants to the pharmacy and get them
24 all filled, then they would bring the prescriptions back to
25 Darryl filled. And then the people that the prescriptions

1 were for would get half of the medication and Darryl would
2 keep the other half.

3 There were also, I believe, a couple months that
4 nobody had to go to the doctor. Dr. Smithers told us that he
5 was having repairs done on the roof of his building, so he
6 actually mailed prescriptions two different times to our
7 house, and you didn't even have to go to the doctor. So that
8 was, you know, that was really convenient.

9 Q. Did you still have to pay the \$300 office visit for each
10 of those prescriptions to get mailed?

11 A. Yes.

12 Q. And when Dr. Smithers would mail prescriptions to your
13 house, was it just your prescription and Darryl's or were
14 there other prescriptions?

15 A. Oh, no, it was whoever had appointments. It would be
16 quite a bit of them. You know, several people.

17 Q. Like six, seven different people's prescriptions would
18 all just get mailed to your house?

19 A. Yeah.

20 Q. And how would you pay Dr. Smithers if you weren't even
21 going to your visits?

22 A. Darryl would either send one of our co-defendants to
23 MoneyGram the money to them or call and do a prepaid credit
24 card over the phone to pay for the visits.

25 Q. Okay. And who would organize these trips of the crew to

1 Dr. Smithers's office? Was it Dr. Smithers? Was it Darryl?
2 How would that happen?

3 A. Darryl would call and say -- tell Dr. Smithers, I've got
4 so many coming tomorrow, you know, a day in advance. And they
5 just kept -- they corresponded, you know, between each other
6 to let him know.

7 Q. Okay. Did you also go to a pharmacy known as Mike's Best
8 Practices in Wytheville?

9 A. Yes. That was -- yeah, that was -- I think that that was
10 maybe the last pharmacy that I went to, the last time that I
11 went maybe. It was -- Dr. Smithers had text my phone after
12 I'd left the office with Mike's Pharmacy and the address.

13 Q. Did he tell you why you needed to go there?

14 A. Because it was already cleared that he would fill the
15 prescriptions.

16 Q. Do you know who worked that out?

17 A. I do not.

18 Q. At some point, you and Darryl got, in essence, busted by
19 the DEA; is that correct?

20 A. Yes.

21 Q. And you began to cooperate with the DEA investigating
22 Dr. Smithers; is that correct?

23 A. Yes.

24 Q. Do you remember approximately when that was?

25 A. June, maybe, of -- May or June of 2016.

1 Q. And what did you do to assist the investigation?

2 A. I called -- I made a phone call that was recorded. I was
3 with the DEA agents, and I called Dr. Smithers, and I paid
4 for, I want to say, maybe four visits over the phone with
5 three different credit cards that the DEA agents had gave to
6 me.

7 Q. If I told you that occurred on or about July the 19th of
8 2016, does that sound about right?

9 A. Yeah, it does.

10 Q. And you made a recorded phone call to Dr. Smithers on
11 that day; is that correct?

12 A. Yes.

13 Q. Have you had a chance to listen to that phone call --

14 A. Yes.

15 Q. -- prior to today?

16 A. Yes.

17 Q. And does that recording accurately reflect the
18 conversation that you had with the defendant, Dr. Smithers?

19 A. Yes.

20 MR. LEE: Your Honor, at this time I'd move for the
21 introduction of Government's Exhibit 48, which is a recording
22 of that phone conversation between the defendant and the
23 witness, Ms. Kicklighter.

24 THE COURT: It will be admitted.

25 (Government's Exhibit 48 received.)

1 THE COURT: Is that on a disk?

2 MR. LEE: I believe it has been already turned over
3 on the thumb drive previously provided.

4 THE COURT: All right. Very well, you may proceed.

5 MR. LEE: Your Honor, I'd like to play that. There
6 is an audio recording and a transcript that is also played.

7 THE COURT: All right. Ladies and gentlemen, you're
8 going to see on this recording on your TV monitor the words.
9 But I need to caution you that the real evidence is what you
10 hear. And if you hear something different than what is
11 written, then you have to rely on what you hear. The words
12 are just merely for your convenience. But its -- the evidence
13 itself is the sound that you hear.

14 You may proceed.

15 MR. LEE: Ms. Vogt.

16 (Audio played.)

17 BY MR. LEE:

18 Q. Was that on the phone conversation that you had with
19 Dr. Smithers?

20 A. Yes, sir.

21 Q. Okay. If I told you that that actually occurred on July
22 18th of 2016, as opposed to the 19th, do you disagree with
23 that?

24 A. No, that's right.

25 Q. Okay.

1 A. Yes.

2 MR. LEE: Now, Ms. Vogt, if you could pull up LK,
3 page 6, Ms. Kicklighter's patient file, please.

4 Which is Government's Exhibit LK.

5 BY MR. LEE:

6 Q. Ms. Kicklighter, do you recognize what that is on the
7 screen in front of you?

8 A. Yes.

9 Q. Okay. What is that?

10 A. That's a discharge notice from Dr. Smithers's office.

11 Q. Okay. It means you've been kicked out as a patient;
12 right?

13 A. Mm-hmm.

14 Q. Okay. The date you were kicked out, July the 5th of
15 2016; correct?

16 A. Yes.

17 Q. So approximately two weeks before you made that phone
18 call to Dr. Smithers to pay for five patients' visits, you'd
19 been kicked out of his practice for using cocaine.

20 A. Yes.

21 Q. Was Darryl Williams even a patient in July of 2016?

22 A. I think he had already been discharged.

23 Q. He'd been kicked out too, hadn't he?

24 A. I believe so, yes.

25 Q. For using some kind of drugs that he wasn't supposed to

1 be using; right?

2 A. Right.

3 Q. All right. If I told you that he was kicked out in May
4 of 2016, would that sound accurate?

5 A. Yes, as far as I can remember.

6 Q. Okay. So, on July the 18th of 2016 when you and Darryl
7 Williams paid \$1200 to Dr. Smithers for five patients to get
8 prescriptions from him, you both had been kicked out of the
9 practice; correct?

10 A. Yes.

11 MR. LEE: Thank you, Ms. Vogt.

12 BY MR. LEE:

13 Q. The pills that Darryl was selling that those five
14 patients got on that day and then the other patients had
15 gotten, along with yourself, for at least the previous year,
16 how much would they sell for on the street?

17 A. The Opanas would sell for \$100 apiece. The roxies would
18 sell, I think, anywhere from 30 to \$50 apiece.

19 Q. And the MS Contin? Did you ever get hydromorphone?

20 A. No, I never received those. I'm not sure.

21 Q. So you were just receiving oxycodone and Opana?

22 A. I got oxycodone for a couple months, and then I was --
23 that prescription got taken away, so then I only received the
24 Opana 40s for the rest of the time.

25 Q. Okay. I think you used some terminology that you're

1 familiar with and I'm familiar with but the jury may not be
2 familiar with. You mentioned roxies, what's a roxy?

3 A. It's Roxicodone, 30 milligrams. That's what -- they're
4 either called Roxicodones or oxycodones, but it's the same
5 medicine.

6 Q. Okay. All right.

7 MR. LEE: If I could direct Ms. Vogt to page 37 of
8 Government's Exhibit LK.

9 MS. VOGT: What pages?

10 MR. LEE: 37, please.

11 BY MR. LEE:

12 Q. Now, Ms. Kicklighter, had you discussed that you'd been
13 in trouble for drugs previously with Dr. Smithers?

14 A. I don't -- I don't remember if I did or not.

15 Q. Did he or somebody in his practice tell you that they
16 were going to do a criminal background check of you when you
17 became a patient?

18 A. Maybe towards the end. There had been somebody new hired
19 in the office that would do, like, you know, would bring you
20 in and you would pay him and then he would see -- you know,
21 kind of like when you go to a regular -- I used the term
22 "regular doctor," like, they take your vitals and all that and
23 then you'd wait and then you'd see the doctor. But he -- we
24 would pay him.

25 Q. Okay. Who was that person?

1 A. I can't -- it's hard for me to remember. Wendell.

2 Q. Wendell Wilson?

3 A. Yes, Wendell Wilson. And he was -- as far as I know, he
4 was an ex-state trooper, I think, from Tennessee maybe.

5 Q. Okay.

6 A. And he still lived in Tennessee, but he came to
7 Martinsville to work at Dr. Smithers's office.

8 Q. Okay. I'm showing you page 37.

9 MR. LEE: Ms. Vogt, if you could blow up down to the
10 bottom. Yes.

11 BY MR. LEE:

12 Q. Page 37 of your patient file. This appears to be some
13 sort of background criminal history check of you. Your name's
14 at the top; correct?

15 A. Yes.

16 Q. And that's your identifying information; your date of
17 birth, your address, et cetera; is that correct?

18 A. Yes.

19 Q. Okay. And it shows that you had previously been charged
20 with withholding information to obtain a controlled substance
21 or prescription, and trafficking in illegal drugs; is that
22 correct?

23 A. Yes.

24 Q. Okay. And then do you recognize whose signature that is
25 right there (indicating)?

1 A. I believe its Dr. Smithers's.

2 Q. Okay. And it indicates he knew that and -- at least when
3 the date on the form is, in November of 2015; correct?

4 A. Yes.

5 Q. So he knew in November, at minimum, that you had had
6 prior charges for prescription fraud and drug distribution.

7 A. Yes.

8 Q. I also want to direct your attention -- well, let me ask
9 you a question. Ma'am, are you familiar with what a
10 prescription monitoring program is?

11 A. Are you referring to, like, the Casper system?

12 Q. Well, what's the Casper system?

13 A. Where -- it's like a nationwide data bank that keeps
14 track of your prescriptions so that you can't get more than
15 one a month filled.

16 Q. Okay.

17 A. Is that --

18 Q. Similar to that. Virginia has a prescription monitoring
19 program. Are you familiar with who looks at those data bases
20 when thinking about writing prescriptions?

21 A. Yeah, your doctor.

22 Q. Okay.

23 A. You know, yeah.

24 Q. And did Dr. Smithers ever talk about the fact that he
25 would check a data base such as that while you were a part of

1 his practice?

2 A. I don't remember him mentioning it.

3 Q. Okay. I want to direct your attention to page 74 of your
4 patient file.

5 MR. LEE: Ms. Vogt, if you could blow up this
6 portion right there, please.

7 BY MR. LEE:

8 Q. So, ma'am, this is a history of your prescriptions.
9 Looking at -- looks between December of 2014 and through
10 February of 2015. Does that look like what that is?

11 A. Yes.

12 Q. Okay. And it also lists the doctors that you'd been
13 getting prescriptions from, both there and on the next page
14 we'll see in a minute. But it references that you've been
15 getting prescriptions from a doctor in Carthage, Tennessee; is
16 that correct?

17 A. Yes.

18 Q. And that you got prescriptions from Dr. Smithers in
19 Martinsville, Virginia; is that correct?

20 A. Yes.

21 MR. LEE: And if you'd go to the next page, page 75,
22 please.

23 BY MR. LEE:

24 Q. Then this also indicates you went to a doctor in
25 Washington D.C.

1 A. Yes.

2 Q. Okay. And then these are all the different pharmacies
3 that you'd had to fill prescriptions at between 2014 and
4 December of 2015. Does that look like the pharmacies that
5 you'd been using?

6 A. Yes.

7 Q. Okay. So Dr. Smithers knew that you had had to go to
8 Chattanooga, Tennessee, to fill a prescription?

9 A. Yes.

10 Q. How far is Chattanooga from Eastern Kentucky where you
11 were living -- or West Virginia?

12 A. I think probably about five or six hours from Pike
13 County, Kentucky.

14 Q. Okay. Did you also have to go to a pharmacy in Richmond,
15 or Dumfries to fill a prescription?

16 A. Yes.

17 Q. And then, obviously, Buffalo, West Virginia, and
18 Jeffersonville, Indiana; is that correct?

19 A. Yes.

20 Q. How far is Jeffersonville, Indiana, from Martinsville?

21 A. It's right on the line of Kentucky and Indiana. So from
22 Pike County, I think it's probably about three hours. I mean,
23 I should remember that because I'd went so many times. But
24 when you're heavily medicated, it's hard to remember things.

25 Q. Okay. So at least in December of 2015, Dr. Smithers knew

1 you'd travelled everywhere from Richmond, Virginia, to
2 Chattanooga, Tennessee, to fill your prescriptions; correct?

3 A. Yes.

4 Q. And that you'd had to travel everywhere from Washington
5 D.C. to Carthage, Tennessee, to get prescriptions; is that
6 correct?

7 A. Yes.

8 Q. Where is Carthage, Tennessee?

9 A. It's -- that was on the border of Tennessee and Georgia.

10 Q. Okay. How far was that from Pike County, Kentucky?

11 A. It's about the same distance. It's Chattanooga. It's
12 close to Chattanooga.

13 Q. Okay. Did Dr. Smithers ever ask you why you had to
14 travel such great distances to get a prescription or to see a
15 doctor?

16 A. No. No, that's just the way things went.

17 Q. Did Dr. Smithers keep normal office hours like a regular
18 doctor would keep?

19 A. The times that I was there, yes, it was -- you know, I
20 mean, you were there a long time waiting. It was like an
21 all-day thing.

22 Q. Did he ever keep office hours late into the night that
23 you're aware of?

24 A. Not that I'm aware of.

25 MR. LEE: Ms. Vogt, if you could put up the map,

1 Government's Exhibit 50, please.

2 BY MR. LEE:

3 Q. Now, this is Government's Exhibit 50. And there's
4 Martinsville (indicating). Can you find where you were living
5 during this time frame on the map and circle that.

6 A. Yes. Right here --

7 Q. If you'd touch the screen, it should allow you to draw,
8 make a circle.

9 THE COURT: You may need to turn that on, Madam
10 Clerk.

11 No. No. On her screen.

12 MR. LEE: So that she can mark it up.

13 THE COURT: So that she can mark it.

14 No, you have to punch on her screen up in the
15 left -- right-hand top.

16 THE WITNESS: Okay. It did something there.

17 Right there on P --

18 MR. LEE: Yeah.

19 Okay. So where that green -- if you could make it a
20 little bit bigger so the jury can see. You can even circle
21 it. There you go.

22 BY MR. LEE:

23 Q. So that's where you were living in the Pikeville area?

24 A. Yes.

25 Q. And Kentuckiana Pharmacy that I just circled is that one

1 of the pharmacies you would routinely go to to fill
2 Dr. Smithers's prescriptions?

3 A. Yes. There and in Poca, and Buffalo, is the ones I more
4 commonly used for when I went to Dr. Smithers.

5 Q. Poca and Buffalo, which are up there that I just circled?

6 A. Yes. And then Olde Virginia Pharmacy that was not too
7 far. It was the closest pharmacy from Martinsville. They
8 would fill the Roxicodones. They wouldn't fill the Opanas,
9 they said they didn't carry 'em.

10 Q. Okay. Do you know how you or Darryl found out about the
11 Kentuckiana Pharmacy in Indiana?

12 A. Darryl found out about it. I don't know if it was from
13 Dr. Smithers or from one of the people that he was sending to
14 Dr. Smithers.

15 Q. Okay. Some of the folks that were part of Darryl's
16 crew -- I'm just going to run through some names, let me know
17 if these were folks that were involved in Darryl's crew or
18 not.

19 Michael Bowe?

20 A. Yes.

21 Q. Jason Bowman?

22 A. Yes.

23 Q. Michael Robinette?

24 A. Yes.

25 Q. Franklin Williams?

1 A. Yes.

2 Q. Earl Blankenship?

3 A. Yes.

4 Q. Michelle Smith?

5 A. Yes.

6 Q. Bryan Harlow?

7 A. Yes.

8 Q. John Greg Harlow?

9 A. Yes.

10 Q. Geneva Bowman?

11 A. Yes.

12 Q. Rebecca Pritt?

13 A. Yes.

14 Q. Is that your mother?

15 A. Yes.

16 Q. Kelly Johnson?

17 A. Yes.

18 Q. Robert Daniels?

19 A. Yes.

20 Q. Samuel Hubbard?

21 A. Yes.

22 Q. Connie Miller?

23 A. I'm not familiar with that name.

24 Q. Okay.

25 A. But, like I said, there was people going that I wasn't

1 aware of.

2 Q. Okay. Pamela Harlow?

3 A. Yes.

4 Q. Do you know a woman named Deborah Reynolds?

5 A. Yes.

6 Q. Was she getting prescriptions? Or was Darryl getting
7 prescriptions in her name?

8 A. I think a couple times he had, yes.

9 Q. You didn't --

10 A. She -- I'm sorry.

11 Q. No. Please continue.

12 A. She didn't have to go to Dr. Smithers's office, so they
13 kind of just did it over the phone. Darryl had her driver's
14 license.

15 Q. Okay. So she never went to see Dr. Smithers?

16 A. No.

17 Q. But still got prescriptions for the opiates?

18 A. Yes.

19 Q. Pain prescriptions.

20 Okay. Do you know Hassel Daniels?

21 A. I'm sorry.

22 Q. Hassel Daniels?

23 A. Doesn't ring a bell.

24 Q. What about Neil Jewell?

25 A. Yes.

1 Q. And Joshua Marion?

2 A. Yes.

3 Q. Were they also part of folks that were going on behalf of
4 Darryl to get pills?

5 A. Yes.

6 Q. I mentioned Connie Miller, you may know her as Rochelle
7 Miller, do you know her?

8 A. It sounds a little bit familiar.

9 MR. LEE: Okay. Ms. Kicklighter, thank you. I
10 don't have any further questions. Please answer any questions
11 defense counsel may have.

12 THE COURT: All right. Cross-examination?

13 **CROSS-EXAMINATION**

14 BY MR. WILLIAMS:

15 Q. Morning, Ms. Kicklighter. How are you today?

16 A. Good morning. I'm fine. How are you?

17 Q. Okay.

18 Now, you had stated, I think prior to that -- let's
19 start out with your medical history here. You first saw
20 Dr. Smithers on September the 10th of 2015; is that correct?

21 A. That sounds about right.

22 Q. Okay. That would have been the first time, I think, in
23 Virginia; does that sound about right?

24 A. The first time was in Beaver, West Virginia.

25 Q. Right. The first time in Virginia would have been

1 September --

2 A. Okay.

3 Q. -- 2015; does that sound about right?

4 A. Correct.

5 Q. Did -- certainly Dr. Smithers took your blood pressure.

6 Did you have a blood pressure 102 over 76; does that sound
7 correct?

8 A. Mm-hmm, yes.

9 Q. Said your heart rate was 92; does that sound right?

10 A. Yes.

11 Q. 98 percent oxygen level; is that correct?

12 A. Yes.

13 MR. LEE: Objection, Your Honor. I don't know that
14 there's any foundation that Ms. Kicklighter would know what
15 the results of any testing that may or may not have occurred
16 or what's in her medical file. There's been no foundation for
17 that.

18 THE COURT: Well, do you know? He's reading
19 something. But do you know what, in fact, the results were?

20 THE WITNESS: I mean, I didn't get the results, but,
21 you know, I about know what my blood pressure and heart rate
22 runs. But, I mean, I wasn't told. It was just routine.

23 BY MR. WILLIAMS:

24 Q. So it was routine that Dr. Smithers would do all of that
25 when you'd go in to talk to him; is that correct?

1 A. Yeah.

2 Q. Okay. And did -- do you recall on that date that you had
3 reported your pain levels? Do you remember what you told him
4 your pain levels were?

5 A. I'm not sure.

6 Q. Let's back up. What was it that you first told him was
7 the reason that you were there asking for pain medicine at
8 that time?

9 A. I told him that I had some nerve damage to a main nerve
10 that goes down into my leg from my back.

11 Q. Okay. And that was the result of some car accidents; is
12 that correct?

13 A. Several different.

14 Q. Okay. What all accidents did you have?

15 A. I mean, I never had no major surgeries or anything like
16 that, just some -- a couple car accidents and --

17 Q. When were those car accidents?

18 A. One was in the early '90s. But I didn't seek medical
19 attention after the accident. And then I had a car accident
20 in 1995.

21 Q. Did you also have an ATV accident?

22 A. Yes.

23 Q. Describe the ATV accident.

24 A. I was going up a hill and the ATV raised up and flipped
25 me off of it.

1 Q. Okay. What kind of injuries did you have as a result of
2 that?

3 A. I didn't go to the hospital. My back hurt for a little
4 while.

5 Q. Okay. Do you recall, did you have any kind of MRI's done
6 during this time?

7 A. I had had some testing done to try to figure out what was
8 making my leg hurt. And that's when I was told that it was
9 nerve damage.

10 Q. And you had some nerve damage in your leg. Do you recall
11 what you told Dr. Smithers was wrong with you on September the
12 10th, 2015?

13 A. I'm sure I told him that my back, lower back, and nerve
14 damage.

15 Q. Okay.

16 A. That's -- that's kind of what you told all the doctors
17 to...

18 Q. Okay. Now, with respect to this, you told -- did you
19 tell Dr. Smithers you had had an MRI done?

20 A. Yeah. I've had several MRIs done, especially in the
21 state of Florida. Because when you went to a pill mill there,
22 they required you to have an MRI. Usually you could go down
23 the street and get one, so.

24 Q. And Dr. Smithers told you you were going to have to
25 provide an MRI, didn't he?

1 A. Yeah, after a few visits.

2 Q. Okay. And he didn't tell you that the very first visit?

3 A. Not that I can recall, no.

4 Q. You're absolutely certain of that, that he didn't tell
5 you on the very first visit that you needed to have an MRI?

6 A. Not that I recall.

7 Q. Okay. Did -- so when you went to Dr. Smithers, you had
8 stated earlier that you didn't really need the pain medicine;
9 is that right? That you were an addict seeking it?

10 A. Yeah.

11 Q. Okay. You never told Dr. Smithers that did you?

12 A. No.

13 Q. Okay. You went in pretending like you had all these
14 injuries, didn't you?

15 A. Yeah. I mean, I knew what to tell the doctors, you know,
16 that your back was hurt.

17 Q. And you knew it because you had done it before, hadn't
18 you?

19 A. Yes.

20 Q. Okay. You had been able to go through and you'd fooled
21 several doctors, hadn't you?

22 A. Yes.

23 Q. Okay. You went through and you had a series -- and you
24 knew how the system worked, didn't you?

25 A. Yes.

1 Q. Dr. Smithers was a good, caring doctor, wasn't he? He
2 cared about you, didn't he? Took time to meet with you. Took
3 time to ask you about your problems.

4 MR. LEE: Objection, Your Honor. I don't know that
5 he's allowing the witness to answer.

6 THE COURT: You can't ask, sir -- ask multiple
7 questions. You need --

8 MR. WILLIAMS: I'm sorry, Your Honor.

9 THE COURT: You need to ask one question at a time,
10 please.

11 BY MR. WILLIAMS:

12 Q. You knew what to tell doctors when you went in, didn't
13 you?

14 MR. RAMSEYER: Your Honor, he never gave her the
15 chance to answer whether he was a caring doctor.

16 THE COURT: Well, I think he's withdrawn that
17 question.

18 MR. WILLIAMS: I'll withdraw that question,
19 Your Honor.

20 BY MR. WILLIAMS:

21 Q. You knew what to tell doctors when you went in, didn't
22 you?

23 A. Right.

24 Q. Okay. Now, did -- on that visit, you indicated you had
25 chronic back pain; does that sound correct?

1 A. Yes.

2 Q. Okay. And do you recall whether you told him it was
3 suddenly or whether it worsened or not?

4 A. I told him that the pain was getting more common.

5 Q. Okay. Did you tell him that there was shooting pains and
6 tightness and numbness?

7 A. Yeah, that's -- you know what to mark on the papers to --
8 yeah.

9 Q. Okay. So you lied at that point; right?

10 A. No, I wouldn't say lied, no, because my leg did hurt.

11 Q. So you had a legitimate pain?

12 A. Not to receive 40 milligrams of opiates three times a
13 day, no, I didn't have that kind of pain.

14 Q. Okay. But you indicated that that's what you had, didn't
15 you?

16 A. Yeah, I told him I hurt a lot.

17 Q. Okay. And do you remember what you told him your pain
18 level was?

19 A. I probably said an 8 to 10.

20 Q. Okay. And so was your pain level an 8 to 10?

21 A. Sometimes.

22 Q. Sometimes. So you were telling the truth; right?

23 A. No, not the whole truth.

24 Q. Okay. But you just said that it was a pain level of 8 to
25 10, and, yeah, that's what it was.

1 A. Yeah, that's what everybody tells -- you know, that's
2 what -- you know, you tell 'em you've got a pain level, you
3 tell 'em you got chronic back problems, your legs hurt from
4 it.

5 Q. So what you're saying --

6 A. That's what --

7 Q. Are you saying that was a lie or you're saying that was a
8 truth?

9 THE COURT: Wait. You can't talk at once. Did you
10 finish your answer?

11 THE WITNESS: That's what everybody told the doctor.
12 We all said basically about the same thing.

13 BY MR. WILLIAMS:

14 Q. Okay. But my question to you was: Was that the truth or
15 was that a lie?

16 A. At some points my pain was between an 8 and a 10.

17 Q. So your answer is sometimes it was a lie and sometimes it
18 was the truth; is that right?

19 A. No. Sometimes my pain would be at an 8, about an 8 or a
20 10. Sometimes. Not all the time.

21 Q. Okay. Now, Ms. Kicklighter, you stated that you had all
22 of this that you and Mr. Williams -- you pled guilty to this
23 charge in Kentucky. You obviously didn't tell Dr. Smithers
24 any of this, did you?

25 A. What?

1 Q. About that you were selling the pills and all that kind
2 of stuff, did you?

3 A. I don't know if Darryl did or not. But he knew that
4 Darryl was paying for everybody's visits.

5 Q. Okay. That doesn't mean he necessarily knew that Darryl
6 was selling pills or anything, does it?

7 A. You could say that.

8 Q. Now, you never told Dr. Smithers that you were selling
9 pills, did you?

10 A. No.

11 Q. Okay. And why did you not tell him? It's because you
12 knew he was going to -- he would kick you out, didn't you?

13 A. I never mentioned it because he already knew what was
14 going on.

15 Q. Okay.

16 A. I mean, you don't -- you don't have people paying for
17 other people's prescriptions and doctor visits at other kinds
18 of doctors.

19 MR. WILLIAMS: I'll object to non-responsive. I
20 think certainly she's speculating here.

21 THE COURT: I'll overrule the objection.

22 BY MR. WILLIAMS:

23 Q. Now, Ms. Kicklighter, you agree that this was a ruse that
24 was cooked up by -- this was a con that was cooked up by
25 Mr. Williams to go back and forth and get pills.

1 A. Yeah, between him and the people that was going.

2 Q. And when you came in, you were telling Dr. Smithers that
3 you were complain -- that you had severe chronic pain, didn't
4 you?

5 A. Yeah.

6 Q. Okay. And did you ever provide the MRIs that he
7 requested?

8 A. No. He had mentioned it after --

9 Q. He was trying to get you to go get MRIs, wasn't he?

10 A. Yeah. I told him I had medical records, but I never
11 brought them to him or anything like that, not the whole time
12 I was going to him.

13 Q. Now, Ms. Kicklighter, you were placed on a high-risk
14 contract in November; is that correct?

15 A. I believe so.

16 Q. Do you recall that?

17 A. Yes.

18 Q. Okay. And you were actually discharged, were you not,
19 from Dr. Smithers's practice?

20 A. Yes.

21 Q. Okay. And when was that, do you recall?

22 A. Maybe in June of 2016, maybe.

23 Q. Okay. And was Darryl Williams kicked out of
24 Dr. Smithers's practice?

25 A. Yes.

1 Q. Who else was kicked out of Dr. Smithers's practice out of
2 that group?

3 A. I can't remember. Maybe Scotty Williams, Franklin
4 Williams.

5 Q. Any others that you know of?

6 A. Not that I can recall.

7 Q. Now, Ms. Kicklighter, did -- you were contacted by the
8 special agents regarding doing that audio tape, were you not?

9 A. Yes.

10 Q. Okay. And they provided you with some money to send; is
11 that correct?

12 A. Yes, some prepaid credit cards.

13 Q. Okay. And then you were going to receive some
14 prescriptions; is that correct?

15 A. Right.

16 Q. Okay.

17 A. There were four or five people at Dr. Smithers's office
18 that day that he needed payment for.

19 Q. Okay. And was it true that you, during that attempt,
20 tried to conceal 25 pills from the agent?

21 A. No. That -- no, that wasn't on that day.

22 Q. That never happened?

23 A. It did happen, but not on that day. That day was just a
24 phone call on July the 19th, 2016.

25 Q. So it would have been a few days later that you did try

1 to conceal 25 pills from the agent; is that correct?

2 A. Yes.

3 Q. Okay. Now, Ms. Kicklighter, how many times did you go
4 back and forth to Dr. Smithers? Is it safe to say you had --
5 you visited on 9-10; is that correct? Does that sound right?

6 A. September, yeah.

7 Q. Okay. Then on November the 5th of 2015?

8 A. Yes.

9 Q. Okay. December the 2nd, does that sound like a correct
10 date?

11 A. Maybe. I know there was a couple months that I didn't
12 have to go. He mailed the prescriptions.

13 Q. Okay. But there were several prescriptions that were
14 gone. Every time you went, did you fill out a pain form?

15 A. I believe so, yeah. He had papers to fill out.

16 Q. And on those pain forms, did you -- what you filled out,
17 you indicated you had severe pain; is that correct?

18 A. Yes.

19 Q. Okay. On July the 5th, 2016, you said you had a pain
20 level of about 8?

21 A. Mm-hmm.

22 Q. Would that sound typical?

23 Okay. And June the 6th, it said you had a pain
24 level of about 9, at worst; does that sound correct?

25 And all of those times, what -- what were you

1 indicating as far as the medicine, how it was helping you; do
2 you recall?

3 A. I didn't receive the Roxicodones the whole time.

4 Q. Okay.

5 A. But I did receive the Opana 40s the whole time.

6 Q. But if you were saying on July the 5th that your relief
7 level was 100 percent, does that sound like what you would
8 have answered?

9 A. Probably so.

10 Q. Okay. And on June the 6th, you said your relief was 90
11 percent.

12 A. I mean, that's -- I mean, I don't recall exact numbers,
13 but...

14 Q. Okay. Was that true? Was the medicine helping you at
15 that point?

16 A. That kind of medicine, such a strong pill, you know,
17 three of them a day, you didn't feel a whole lot of anything.

18 Q. Okay. But you were indicating to Dr. Smithers that his
19 treatment was helping you, did you not?

20 A. Yes.

21 Q. Okay. And was that a lie?

22 A. That was an uninformed observation. I know -- what I
23 know now compared to what I knew then, the medicine was
24 hurting me more than it was helping me.

25 Q. Your involvement with Darryl Williams got you in a lot of

1 trouble, did it not?

2 A. Yes.

3 Q. Darryl conned you, didn't he?

4 A. No.

5 Q. He didn't?

6 Now, when you said you first went to Dr. Smithers,
7 you said that he had -- it was just him, I think, in the
8 office; is that right?

9 A. Yes.

10 Q. Okay. And as he progressed, he began to hire staff as
11 time went on, did he not?

12 A. No. He hired one guy, Wendell. Sometimes his wife would
13 come in the office and take up -- there was actually a time
14 that Darryl went in the office and was taking people's
15 paperwork for him and helping Dr. Smithers because he would be
16 by his self.

17 Q. Was there a time when Peter Bodai was working there? Do
18 you recall Peter Bodai?

19 A. I don't recall. The only one I recall is Dr. Smithers,
20 Wendell, and Dr. Smithers's wife. I don't recall her name
21 though.

22 Q. Dr. Smithers did pill counts? Or Wendell did, didn't he?
23 When you would come in?

24 A. No.

25 Q. He never did a pill count on you?

1 A. I mean, he may have. But it wasn't -- it wasn't a
2 regular thing.

3 Q. Okay.

4 A. Not that I can recall.

5 Q. Okay. You don't recall?

6 A. I was -- I mean during this time I was always high,
7 really high.

8 Q. Okay. So it's fair to say you don't remember a lot
9 during that period?

10 A. I don't remember if they were counting pills or not.

11 Q. Okay.

12 A. I think towards the end maybe they were. And towards the
13 end he did start to do drug tests.

14 Q. Okay. They were doing -- Wendell was doing the drug
15 testing; right?

16 A. Right.

17 Q. You would have to go in and take that test?

18 A. Mm-hmm.

19 Q. And you tested positive for cocaine. And when you did,
20 what happened? What did Dr. Smithers do?

21 A. I was discharged. Some of the other people that tested
22 positive for cocaine, they didn't get discharged.

23 Q. Okay. Who was that?

24 A. But Darryl and I did.

25 Q. Who didn't get discharged?

1 A. I think Michael Bowe.

2 Q. You think? Or you know?

3 A. I know there was -- there was a couple that -- because we
4 had talked about it why somebody -- you know, one person got
5 discharged and the other person didn't.

6 Q. Most everybody within Darryl Williams's group got
7 discharged at some point, did they not?

8 A. Yeah, I think so, after -- yeah.

9 MR. WILLIAMS: May I have just a moment, Your Honor?

10 BY MR. WILLIAMS:

11 Q. Ms. Kicklighter, one thing I think Mr. Lee had brought up
12 was that you tested positive on 6-6 of '16, does that sound
13 correct? For cocaine?

14 A. Mm-hmm.

15 Q. And you were discharged on 7-5 of '16; is that correct?

16 A. Yeah, that sounds about right.

17 Q. Okay. And was that lab result sent off to be confirmed?
18 Is that what --

19 A. I'm assuming --

20 Q. Did you request --

21 A. I'm assuming that he sent it off to a lab.

22 Q. Okay. And did you request it be sent off to a lab to be
23 confirmed?

24 A. No.

25 Q. Okay. But they sent it off to make sure?

1 A. That's what Dr. Smithers told me.

2 Q. Okay. And that was the reason why they waited a month
3 before they discharged you; correct?

4 A. I guess so.

5 Q. And Mike Bowe was discharged about the same time you
6 were, was he not?

7 A. Yeah, it was -- yeah, they -- yeah, I believe so.

8 MR. WILLIAMS: I believe that's all the questions I
9 have at this time.

10 THE COURT: All right.

11 Redirect?

12 MR. LEE: Briefly, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. LEE:

15 Q. Ms. Kicklighter, even though you and Darryl Williams had
16 been discharged, Dr. Smithers was still willing to take your
17 money, wasn't he?

18 A. Oh, yeah. Yeah. It was -- Darryl and him had friendly
19 conversations. Darryl was actually trying to help
20 Dr. Smithers, I think, come up with an investor for -- to try
21 to put in a pharmacy. Business went on as usual, even though
22 we weren't going.

23 Q. And Darryl Williams was still willing to and did, and
24 Dr. Smithers was willing to accept new patients sent by Darryl
25 Williams after both you and he had been discharged, wasn't he?

1 A. Yes.

2 Q. Okay.

3 MR. LEE: LK, page 31.

4 BY MR. LEE:

5 Q. I'm going to show you something, Ms. Kicklighter.

6 On your screen there, do you recognize what that is?

7 A. There's nothing on here right now.

8 MR. LEE: Government's Exhibit LK, page 31.

9 BY MR. LEE:

10 Q. Is that your intake form at Priority Urgent Care in
11 Beckley, West Virginia?

12 A. Yes.

13 MR. LEE: If you could go to the next page, please.

14 BY MR. LEE:

15 Q. And you've signed it there August the 12th of 2015.

16 A. Yes.

17 MR. LEE: And then the next page. Page 33.

18 BY MR. LEE:

19 Q. Signed it again. And that's Dr. Smithers's signature,
20 isn't it?

21 A. Yes.

22 Q. Okay. Ms. Kicklighter, fair to say the majority of the
23 doctors you've been to, have they been shut down?

24 A. Yes.

25 MR. LEE: If you could go to page 86.

1 BY MR. LEE:

2 Q. This is page 86 of your medical records. And it
3 references that you had previously been to a place called the
4 Hope Clinic in Charleston, West Virginia; is that correct?

5 A. Yes.

6 Q. What happened to the Hope Clinic?

7 A. I think I got discharged at the Hope Clinic.

8 Q. What happened to the practice itself?

9 A. Oh, it was shut down. I mean, every pain doctor that
10 I've been to has been shut down.

11 Q. Okay.

12 A. But, actually, at the Hope Clinic, now I remember, that
13 was where the doctor was at that actually showed me the
14 stretching I can do to relieve some pain in my leg.

15 Q. But it got shut down, too, didn't it?

16 A. Yeah. Yeah. Then there was a pharmacy that everybody
17 went to, I can't think of the name of it. It was in
18 Charleston, West Virginia. But it got shut down too.

19 MR. LEE: Thank you, Ms. Kicklighter. No further
20 questions.

21 THE COURT: All right. Anything further?

22 **RECROSS-EXAMINATION**

23 BY MR. WILLIAMS:

24 Q. One final question.

25 Ms. Kicklighter, once again, most of Darryl

1 Williams's patients were discharged; correct? By
2 Dr. Smithers?

3 A. I'm not sure how many.

4 Q. Okay. But a significant number of them, they were
5 discharged; correct?

6 A. I would say, yes.

7 MR. WILLIAMS: No further questions.

8 THE COURT: All right. Thank you, ma'am.
9 You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Ladies and gentlemen, we're
12 going to take a break at this time. If you'll follow the
13 bailiff out.

14 (Proceedings held in the absence of the jury.)

15 THE COURT: All right. Counsel, is there anything
16 we need to take up before we take a recess?

17 If not, we'll be in recess.

18 (Proceedings suspended at 10:30 a.m. and resumed at 10:47
19 a.m.)

20 THE COURT: Are we ready for the jury?

21 MR. RAMSEYER: Yes, Your Honor.

22 THE COURT: All right. We'll have the jury in.

23 (Proceedings held in the presence of the jury.)

24 THE COURT: All right. You may call your next
25 witness.

1 MR. RAMSEYER: I'd call Jessica Parsley.

2 THE CLERK: Come forward, please.

3 If you'll raise your right hand.

4 Do you solemnly swear that the testimony you're
5 about to give in this case shall be the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE WITNESS: Yes, I do.

8 THE CLERK: You may take the stand.

9 **JESSICA PARSLEY,**

10 Called as a witness herein by the Government, having been
11 first duly sworn, was examined and testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. RAMSEYER:

14 Q. Please state your name.

15 A. Jessica Parsley.

16 Q. Okay. Ms. Parsley, what's your age?

17 A. Thirty-eight.

18 Q. And where do you live? Not your street address, just the
19 city and state.

20 A. Kermit, West Virginia.

21 Q. Kermit, West Virginia?

22 A. Mm-hmm.

23 Q. Is that a "yes"?

24 A. Yes.

25 Q. How long have you lived there?

1 A. Two years.

2 Q. Where did you live before that?

3 A. Lenore, West Virginia.

4 Q. That's Lenore?

5 A. Yes, sir.

6 Q. How long did you live there?

7 A. I lived there for about ten years.

8 Q. About how far are Lenore and Kermit from each other?

9 A. About 15 miles.

10 Q. Okay. So same general area?

11 A. Same general area.

12 Q. Have you lived there in that same general area your whole
13 life?

14 A. Except when I was away for college.

15 Q. Okay. Where did you go to college?

16 A. Marshall.

17 Q. Marshall. How long were you there?

18 A. Three years.

19 Q. Okay. All right. Ms. Parsley, do you recognize the man
20 sitting over here in the blue jacket?

21 A. I do.

22 Q. Who is that?

23 A. That's Dr. Smithers.

24 MR. RAMSEYER: Okay. And I'd ask the record reflect
25 she's identified the defendant, Your Honor.

1 THE COURT: It will so reflect.

2 BY MR. RAMSEYER:

3 Q. Was there a time that you went to see Dr. Parsley and got
4 prescriptions -- excuse me, Dr. Smithers and got prescriptions
5 from him?

6 A. I did.

7 Q. Okay. Were you the first one in your family to do that
8 or had someone else gone earlier?

9 A. My husband went first.

10 Q. Okay. What was your husband's name?

11 A. Billy Jeff Parsley.

12 Q. Okay. And if the record reflects that the last time you
13 got prescriptions from Dr. Smithers, both you and your
14 husband, were December 14th of 2016; does that sound about
15 right?

16 A. It was.

17 Q. Okay. And it's easy to remember, isn't it?

18 A. It sure -- yes, it is.

19 Q. Because what happened four days later?

20 A. My husband passed away.

21 Q. And he overdosed, didn't he?

22 A. He did.

23 Q. And it was on oxycodone, oxymorphone; is that right?

24 A. Yes.

25 Q. And were there other drugs he was taking too?

1 A. He was just -- he took prescription drugs. It was all
2 his prescription drugs.

3 Q. Well, he took Xanax, didn't he?

4 A. That was prescribed also.

5 Q. But not from Dr. Smithers?

6 A. But not from Dr. Smithers.

7 Q. So why did he start -- why did your husband -- did you go
8 with your husband when he first started going to Dr. Smithers?

9 A. No.

10 Q. Now, your husband had been a drug addict for a while,
11 hadn't he?

12 A. I don't --

13 Q. He told --

14 A. I assumed.

15 Q. Well, you didn't just assume. You gave him some of your
16 pills for him to abuse, didn't you?

17 A. No.

18 Q. Ma'am?

19 A. I didn't give -- I never gave him any of my pills.

20 Q. Okay. Was there anything wrong with you?

21 A. Is there anything wrong with me?

22 Q. Was there anything wrong with you, any reason you need to
23 be on high-powered medications for months?

24 A. At the time I had had a car wreck -- or before. Then
25 I've had, like, knee surgeries and things.

1 Q. It's a simple question. Did you need to be on
2 high-powered --

3 A. No, I didn't.

4 Q. -- meds for months at a time?

5 A. I didn't know back then though.

6 Q. All right. Now, your husband was going to Smithers. Did
7 he talk to you about that, that he was going to Dr. Smithers?

8 A. Yes.

9 Q. Did you ask him, why are you going all the way to
10 Martinsville, Virginia, to get pills?

11 A. Yes.

12 Q. Okay. What did he say?

13 A. He couldn't find a doctor around the house.

14 Q. Okay. Not around the house, not --

15 A. Or not closer to home. That was the closest one.

16 Q. So he couldn't find anybody within an hour.

17 A. No.

18 Q. He couldn't find anybody within two hours. He couldn't
19 find anybody within three hours; right?

20 A. Right.

21 Q. He couldn't find anybody within four hours; correct?

22 A. Right.

23 Q. And how many doctors do you think there are within four
24 hours of where you and your husband lived?

25 A. Many.

1 Q. Like thousands; right?

2 A. Yes, sir.

3 Q. At the time you and your husband were getting
4 prescriptions from Dr. Smithers, did you have insurance?

5 A. I did.

6 Q. Was it Medicaid?

7 A. I believe so at that time.

8 Q. Okay. And you're on Medicaid because you didn't have
9 much money; is that right?

10 A. He had lost his job.

11 Q. Right. Neither one of you had much money; correct? Did
12 you and your husband have a lot of money?

13 A. We -- he had lost his job, but we was living off his
14 retirement.

15 Q. You say "his retirement," was it a disability check?

16 A. No. He had -- when he lost his job, we drew all his
17 retirement out. He had worked for the State.

18 Q. Okay. All right. But you had some sort of state
19 insurance, maybe it wasn't Medicaid, what was it? Some sort
20 of -- did you have insurance?

21 A. We had Medicaid at the time.

22 Q. You did have Medicaid.

23 A. With Dr. Smithers, yes.

24 Q. Okay. Did you use Medicaid to pay for your office
25 visits?

1 A. No.

2 Q. Could you use Medicaid if you went to some other doctor?

3 A. Yes.

4 Q. Okay. So why were you paying \$300 to go see

5 Dr. Smithers?

6 A. He was supposed -- I was under the impression that

7 eventually he would be taking the medical card.

8 Q. Okay. He never did, did he?

9 A. No.

10 Q. Okay. But why did you pay \$300 when you could have gone
11 right down the road and seen a doctor for free?

12 A. I couldn't get in anywhere.

13 Q. You could get in, couldn't you?

14 A. When you called to make appointments, everybody told you
15 they was full. That was why I started going to Dr. Smithers.

16 Q. So any doctor within four hours would not see you?

17 A. I'm not saying any doctor, just the ones I called.

18 Q. Well, weren't you calling and asking if you could get
19 pain pills?

20 A. I was calling getting pain management.

21 Q. And people wouldn't accept you?

22 A. They would -- no.

23 Q. Okay. And -- but you could have gone -- like if you had
24 something really wrong with you, like if you were sick, had a
25 problem with your elbow or something, you could have gone to a

1 doctor and Medicaid would have paid for it; right?

2 A. Yes.

3 Q. You just couldn't go to a doctor that would give you pain
4 pills; correct?

5 A. Correct.

6 Q. So when you and your husband went to Dr. Smithers --
7 well, at some point did you start going to Dr. Smithers?

8 A. I did.

9 Q. And why did you start going after your husband had been
10 getting pills from him?

11 A. I started going for the -- I just told you the reason I
12 started going. I was trying to find -- I was trying to find a
13 doctor. I didn't want to travel that far. But I couldn't
14 find one, so I finally started going with him since he was
15 going there anyways.

16 Q. So the record showed your husband started getting
17 prescriptions at Martinsville in September of 2015; does that
18 sound about right?

19 A. That sounds about right.

20 Q. And that you started getting prescriptions in April of
21 2016; does that sound about right?

22 A. That sounds about right.

23 Q. Isn't it true your husband was asking you to go there so
24 between you you'd have more pills?

25 A. No.

1 Q. Ma'am.

2 A. He didn't.

3 Q. Okay. So when your husband -- at some point you started
4 going at the same time; right?

5 A. Yes.

6 Q. Both of you. Was the doctor there all the time?

7 A. Yes.

8 Q. He was always there?

9 A. He was always there when I was there.

10 Q. When you talked with him, you'd tell him your problems?

11 A. Yes.

12 Q. And he'd give you your prescriptions; right?

13 A. Yes.

14 Q. Now, where did you fill your prescriptions?

15 A. I can't recall the pharmacy name. It was close to Poca,
16 West Virginia.

17 Q. Okay. Now, is Poca on the way between where you live and
18 the doctor's office?

19 A. It's about 20 minutes out of the way.

20 Q. Okay. Let's show this here. So where you live is --
21 where do you live in West Virginia? What's the name --

22 A. Lenore. At the top.

23 Q. Okay. So Lenore is right here.

24 A. Yes.

25 Q. Okay. Do you see that? I'm showing you Government's

1 Exhibit 50.

2 A. Yes.

3 Q. Okay. And down here on the right -- let me move this so
4 you can see. You can see it too. So that's Lenore where you
5 live. Then Dr. Smithers's office is way over here; right?

6 A. Yes.

7 Q. So it's like at least five hours driving; right?

8 A. Yes.

9 Q. And then if you look, if you went from there to there,
10 that doesn't really take you to Poca, does it?

11 A. We -- to go there, even if you wasn't going to
12 Dr. Smithers, whatever, you actually go around.

13 THE COURT: If you'll just -- I'll tell you, if
14 you'll just speak into the microphone and repeat what you just
15 said.

16 THE WITNESS: I'm not for sure the name of the road,
17 but I think it's 77.

18 THE COURT: You don't need to look at the map. Just
19 speak right into the microphone.

20 THE WITNESS: Okay. The road -- those would be
21 two-lane roads, the ones you just pointed out.

22 BY MR. RAMSEYER:

23 Q. Okay. So, again, Lenore is here.

24 A. Yes.

25 Q. And then about, what, 100-some miles north is Poca?

1 A. Yes.

2 Q. Okay. So you drive together to Martinsville.

3 A. Yes.

4 Q. You go to Poca right away or do you stop at home?

5 A. Sometimes we went home first, then we went back the next
6 day. And sometimes we would go that way and stop.

7 Q. Well, again, there's a whole bunch of pharmacies near
8 where you live; right?

9 A. Yes.

10 Q. There's pharmacies between Martinsville and where you
11 live; right?

12 A. Yes.

13 Q. So why didn't you fill them there?

14 A. They wouldn't fill those prescriptions.

15 Q. Because they thought they were illegitimate?

16 A. They wouldn't give you a reason. They wouldn't fill
17 them.

18 Q. Well, you knew why.

19 A. No, they wouldn't tell me why. They just said they
20 couldn't fill them.

21 Q. Okay. Now, you didn't have a job, your husband didn't
22 have a job. How did you pay for your pills?

23 A. With his retirement.

24 Q. With his retirement?

25 A. He wasted his whole retirement on Dr. Smithers's visits.

1 Q. How much was his retirement?

2 A. We got a small one -- together it was close to 40,000.

3 Q. \$40,000?

4 A. Yes, sir.

5 Q. And you spent it on office visits and pills,
6 prescriptions?

7 A. Yes.

8 Q. Filled the prescriptions.

9 How much did you have to pay for the prescriptions
10 at Poca? How much were they?

11 A. I can't recall. It was expensive.

12 Q. What were the drugs you were getting from Dr. Smithers?

13 A. I don't recall the names of them.

14 Q. Because you weren't taking them, were you?

15 A. No. There was two -- yeah, I was taking my medicine. It
16 was just I don't remember the exact names of them. It was two
17 pain pills and then several other prescribed pills. I can't
18 even remember the names of them though.

19 Q. You didn't even fill those other ones, did you?

20 A. I filled all my medicine.

21 Q. You filled them all every time. Did you take them?

22 A. Yes.

23 Q. You took all the medicine?

24 A. Sometimes, I don't know -- sometimes I may have not. I
25 took -- I took all of the ones I was supposed to take all the

1 time. The pain medication and I think there was like -- I
2 don't remember what the other one was.

3 Q. Okay. But you don't know the names of the medicines you
4 got?

5 A. They were Opanas and I think it was oxycodone.

6 Q. Okay. So Opanas and oxycodone. How much did those cost
7 at the pharmacy?

8 A. I want to say around 900, but I'm not real sure.

9 Q. \$900?

10 A. Yes.

11 Q. Every time you went?

12 A. Yes.

13 Q. Okay. And do you know what those sell for on the street?

14 A. I do not.

15 Q. You live in Lenore, West Virginia?

16 A. I did at the time. I don't.

17 Q. Okay. Now, you say you were taking all these things.

18 MR. RAMSEYER: If we could go to Government's
19 Exhibit 120 -- let's go to 128 first, actually.

20 BY MR. RAMSEYER:

21 Q. You got some prior experience with drugs, right, in terms
22 of your criminal background?

23 A. No.

24 MR. RAMSEYER: If we can show 128, please. It's
25 already in the file.

1 It's JP-128 is the exhibit that's previously been
2 introduced. Page number 128.

3 BY MR. RAMSEYER:

4 Q. Okay. If we could maybe look at this. So this is in
5 your patient files Dr. Smithers had on May 19th, 2016.

6 Possession with intent to deliver controlled
7 substances. Do you see that?

8 A. Yes.

9 Q. So you did have prior experience with drugs; right?

10 A. There was nothing ever come about that from what I
11 recall.

12 Q. Right.

13 A. There was never no evidence or anything. It never even
14 got out of the magistrate court.

15 Q. Well, you were charged with it; right?

16 A. Uh-huh.

17 Q. And you pled guilty to something, didn't you?

18 A. Yes. Nothing to do with drugs.

19 Q. Well, it was all charged at the same time, wasn't it, the
20 forgery and the possession?

21 A. Yes, the forgery was forgery of a DMV ticket.

22 Q. Okay.

23 A. I worked at the courthouse at the time.

24 Q. Okay. Did you lose your job?

25 A. I did.

1 Q. Okay. Because you forged a DMV --

2 A. I did.

3 Q. Okay. And you -- what was the possession with intent to
4 deliver? What was the circumstances surrounding that?

5 A. There was never nothing -- there was never -- no,
6 nothing.

7 Q. Never no nothing?

8 A. There was never nothing. They couldn't never come up
9 with any type of evidence at all. We don't even know how they
10 got the warrant.

11 Q. What did it say you did?

12 A. There was nothing that said anything.

13 Q. Okay. So but you pled guilty to lying on a form?

14 A. Yes.

15 Q. Okay. Why did you lie on a form in your job?

16 A. I lied. I said a ticket was paid and it wasn't paid.

17 Q. Why did you do that?

18 A. I don't know.

19 Q. That doesn't make any sense.

20 A. I can't -- that was a very long time ago. It was --

21 Q. It was in 2008?

22 A. Yes.

23 Q. And you don't know why you did it?

24 A. Well, it was mixed in with the paper -- the wrong papers.
25 That was a very tricky case. It wasn't intentional like I

1 marked it and meant to do that.

2 Q. But it had to do with drugs, didn't it?

3 A. No.

4 Q. Part of the deal?

5 A. No, it was a DMV speeding ticket or a parking ticket or
6 something like that.

7 Q. Okay.

8 A. Had nothing to do with drugs.

9 Q. Okay.

10 MR. RAMSEYER: We can take that down.

11 BY MR. RAMSEYER:

12 Q. You say you were taking all your drugs.

13 MR. RAMSEYER: Let's look at 120.

14 All right. If we can blow that up.

15 BY MR. RAMSEYER:

16 Q. So did you get urine screened there? Did you have to
17 give a urine sample when you went to Dr. Smithers?

18 A. Yes.

19 Q. This is dated May 19th of 2016. And it shows you were
20 negative for Noroxycodone?

21 A. I don't even know what that is.

22 Q. That means you were positive for oxycodone, which means
23 you may have, like, put some oxycodone pill in the urine, but
24 it's not really in your system. That's what the negative
25 means.

1 A. No.

2 Q. So is that what you were doing? Taking a pill, crumbling
3 it up and putting it in your urine?

4 A. No, sir.

5 Q. Did anybody watch you give your urine sample?

6 A. No.

7 Q. Okay. You had an opportunity to do it if you wanted to;
8 right?

9 A. I guess, yes.

10 Q. I mean, you could have taken somebody else's urine with
11 you, couldn't you?

12 A. I don't think so. They -- there was a temperature gauge
13 on the side of it.

14 Q. Well, you're a fairly intelligent person. You know that
15 all you have to do is put the urine in a bag on your leg and
16 that it will still be warm.

17 A. I guess. I guess you could.

18 Q. Okay. So did Dr. Smithers talk to you about this? That
19 it was looking like maybe you weren't taking the oxycodone
20 that he was prescribing?

21 A. I think the oxycodone was the one you took on as needed.
22 You didn't have to take it all the time or you could take it.
23 He only gave you so much of it. When you ran out, you was
24 out.

25 Q. Well, ma'am, you got -- you went that first time and --

1 So you were getting Opana. Looks here like you were
2 taking -- in April, a month before, you got 60 Opana and 30
3 oxycodone pills; right? That's what the records show.

4 A. If that's what the record shows.

5 Q. Okay. So if you took one a day --

6 A. I don't remember how they were -- how it was prescribed.
7 I'd have to look.

8 Q. Well, how did you take it?

9 A. As prescribed. So that's what I'm saying, I don't -- it
10 was every so many hours apart, if I recall right.

11 Q. Okay. All right. So if we could -- so inconsistent.

12 MR. RAMSEYER: Now if we'd go to the previous page.
13 It would be page 119.

14 All right. If we go back to the next time. So it
15 would be 1-18, excuse me.

16 So 118, if we could highlight that up there at the
17 top, please. Right here.

18 So this is in August. So three months later.
19 You're drug screened again. August 17th of 2016. If we could
20 scroll down.

21 BY MR. RAMSEYER:

22 Q. So it shows here you're negative for oxycodone. But he's
23 been writing it for you, hasn't he?

24 A. Yes.

25 Q. Okay. So why are you negative?

1 A. I always -- only thing I can remember is that oxycodone
2 always did run out before it was time to go back to the
3 doctor.

4 Q. So you took all --

5 A. He called it the Brixor (phonetic) medicine. So, like --

6 Q. Let me ask you this. After that previous inconsistent
7 result you had back in May, did he take you off of controlled
8 substances? Did he quit giving you prescriptions for
9 oxycodone and Opana?

10 A. He tried a different medication. And when it didn't
11 work, he put me back over on it. I don't remember the name of
12 the medicine.

13 Q. Let me just go through what the records show, you can
14 correct me if it's not what happened. But it shows that you
15 got a prescription on April 21st, for 60 Opana, 20 milligram,
16 and 30 oxycodone, ten milligram.

17 Came back on May 19th and got 20 milligram
18 oxycodone.

19 And on June 20th of 2016 you got 60 oxycodone and 40
20 oxymorphone.

21 July 18th, you got 50 oxycodone and 60 oxymorphone.

22 August 17th, you got 50 oxycodone and 60 oxymorphone
23 30s.

24 In September 15th, you got 45 oxycodone 30s and 60
25 oxymorphone 30s.

1 In October you got 30 oxycodone, 30 milligrams,
2 October 18th of 2016, and 60 oxymorphone 30s.

3 In November 15th you got 30 oxycodone 30s and 60
4 oxymorphone 30s.

5 And on December 14th, four days before your
6 husband's death, you got 30 oxycodone 30 and 60 oxymorphone
7 30.

8 So does that refresh your memory, you just kept on
9 getting pain pills no matter what the results were?

10 A. I got my prescription once a month from the time I
11 started.

12 Q. And it was always pain pills.

13 A. Yes.

14 Q. Oxycodone, oxymorphone; right?

15 A. Yes. One time we did try patches, but I was allergic to
16 them.

17 Q. Allergic to the patch?

18 A. Mm-hmm.

19 Q. Was it fentanyl?

20 A. No. It started with a "B".

21 Q. Butalbital?

22 A. Yes.

23 Q. So you told him that wasn't working, so he put you back
24 on the oxies.

25 A. Yes.

1 MR. RAMSEYER: Okay. If we could go to the next
2 page.

3 Go to 119, please.

4 Can we briefly go back to -- no, 116 next. 116 is
5 another urine screen result. So we go up here to the date,
6 November 15th of 2016.

7 And go down to the bottom.

8 BY MR. RAMSEYER:

9 Q. So it shows you're negative for nortriptyline,
10 butalbital, and gabapentin. He was prescribing all those
11 things for you; right?

12 Go to the top and it will show you.

13 You were prescribed gabapentin, nortriptyline. Why
14 were you negative for those?

15 A. I probably wasn't taking those.

16 Q. You weren't even filling them, were you?

17 A. No, I believe I filled -- I believe they wouldn't fill
18 them unless you filled all your medicine.

19 Q. Okay. So have -- so you filled them because you had to
20 to get the prescriptions you want?

21 A. Yes.

22 Q. All right. But you weren't taking them?

23 A. I took -- I took them some. I don't know -- I don't
24 think I took them on a daily basis, though.

25 Q. Okay. Go to 117.

1 So you were negative for oxycodone again, even
2 though you were getting prescriptions for it every month?

3 A. Yes.

4 Q. But you got a prescription again in December, didn't you,
5 for oxycodone?

6 A. Yes.

7 Q. And your husband, he got oxycodone and oxymorphone
8 consistently, too; right?

9 A. Yes.

10 Q. When's the last time you snorted any pills?

11 A. I have no idea.

12 Q. You're under oath, ma'am, you need to tell the truth.

13 A. I know that. I don't have any idea.

14 Q. Have you snorted pills?

15 A. I have not snorted any of these pills.

16 Q. Have you snorted pills?

17 A. I have.

18 Q. And relatively recently, haven't you?

19 A. No.

20 Q. Within five years?

21 A. Yes.

22 Q. Okay. What was the last kind of pill you snorted?

23 A. Probably a pain pill. But it was years ago, that's what
24 I'm saying. It's probably been around five years ago.

25 Q. What kind of pain pill did you snort last?

1 A. I -- I'm not for sure, maybe a Vicodin or a Lortab.

2 Q. Hydrocodone?

3 A. Hydrocodone, yes.

4 Q. Okay. So you were pretty excited when you got oxycodone
5 and oxymorphone because that was a step up, wasn't it?

6 A. No. I didn't do that on a regular basis. I didn't like
7 doing it.

8 Q. You didn't like doing it, but you'd do it.

9 A. No. I only tried it. It wasn't like I was doing it on a
10 regular basis.

11 Q. Okay. Now you remember testifying to the grand jury
12 about this matter?

13 A. A little.

14 Q. I mean, you remember that you did it?

15 A. I have Graves' disease, so my memory is not the best in
16 the world. That's why I told them that before I walked in
17 here too.

18 Q. Do you remember coming to this courthouse?

19 A. I do remember coming to this courthouse and testifying.

20 Q. And remember at that time when we asked about why you
21 were testing negative, you said you misplaced or lost your
22 pills?

23 A. I have -- I had misplaced and lost my pills throughout
24 the month. I said that. But I also know that I tried to take
25 all my pills as prescribed, too. So that's what I'm saying.

1 Usually sometimes they would turn up and sometimes you
2 wouldn't find them.

3 Q. Were there times when you saw Dr. Smithers and you had a
4 pill count?

5 A. There was.

6 Q. And were there times your pill count was off?

7 A. There was.

8 Q. Did it make any difference or did you keep getting your
9 pills?

10 A. I kept getting my pills.

11 Q. Did you tell -- do you know what Suboxone is?

12 A. I do.

13 Q. Is it a drug -- it's for drug addiction?

14 A. Yes, it is.

15 Q. And did you tell Dr. Smithers that you'd been on Suboxone
16 in the past?

17 A. I had.

18 Q. So you told him you were a drug addict that had been on
19 Suboxone --

20 A. I told him I'd been on Suboxone.

21 Q. And it's for drug addiction, right? That's why you were
22 taking it.

23 A. Yes.

24 Q. And this was before he wrote these prescriptions for you.

25 A. Yes.

1 Q. Now, why didn't you go back to visit -- because you say
2 you needed these pain pills, why didn't you go back after your
3 husband died and get another prescription for it?

4 A. I don't want -- I will never take pain pills again unless
5 I'm on death's bed.

6 Q. Okay. So can you tell the jury a little bit about what
7 happened on December 18th? I know it's painful, but it's
8 important.

9 A. On December 18th, I woke up and my husband was dead.

10 Q. He's about the same age as you, maybe a couple years
11 older?

12 A. He was three years older than I was. He was 38, getting
13 ready to turn 39. He had a birthday in three weeks after he
14 died.

15 Q. And what had he been doing before he died?

16 A. He had worked cutting trees the day before.

17 Q. Well, you had people at your house, didn't you?

18 A. There was two people that stopped by that evening, yes.
19 I was at the ball games.

20 Q. And he was taking his pills, wasn't he?

21 A. I don't know what they were doing. I told you-all that
22 before, I was at the ball game.

23 Q. Well, you came back and --

24 A. When I came back, I wasn't -- I took a shower and then I
25 went straight to sleep. We had had somebody die the night

1 before in our family.

2 Q. Is that from an overdose?

3 A. I'm not sure what the autopsy ended up saying.

4 Q. For the other one? You don't know about the other one?

5 A. I don't know about the other autopsy, no.

6 Q. Okay. So after you quit going to Dr. Smithers, you still
7 taking pain pills?

8 A. No.

9 Q. When you went to Dr. Smithers's office, were there any
10 nurses there?

11 A. No.

12 Q. Was there any medical personnel at all?

13 A. There was somebody you seen before you saw Dr. Smithers.

14 Q. Is that Wendell?

15 A. Yes.

16 Q. Okay. And he -- would he just take your money?

17 A. Yes.

18 Q. What's the farthest you've ever driven to go to a doctor
19 to get pills?

20 A. Martinsville.

21 Q. Martinsville, Virginia?

22 A. Yes.

23 Q. Do you remember how Billy found out about him?

24 A. He went to his office in Beckley.

25 Q. Before that closed?

1 A. But he was closing, he wouldn't see him. He told him to
2 come to his office -- he was reopening his -- he was moving
3 offices from Beckley to there.

4 Q. To Martinsville, Virginia, that's what Dr. Smithers said?

5 A. Yes.

6 MR. RAMSEYER: May I just have a moment, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. RAMSEYER:

9 Q. So what's the only thing that changed between December
10 and January? Because your next appointment would have been
11 January; right?

12 A. Yes.

13 Q. So why did you quit going to Dr. Smithers?

14 A. Because my husband died and I didn't want to have to take
15 that medicine anymore.

16 Q. Your husband died from a drug overdose?

17 A. He did. From a drug overdose and it was a culmination of
18 all of those.

19 Q. Right. But were you taking combinations?

20 A. I was taking what was prescribed. I guess it just scared
21 me. I have a son to live for.

22 Q. Okay. And are you doing fine now?

23 A. I am.

24 Q. Have you taken oxycodone and oxymorphone?

25 A. I have not.

1 Q. When you do take those, does it affect you?

2 A. I don't understand the question.

3 Q. When you snort pills, does it have an effect on you?

4 A. If anybody snorts pills it has an effect.

5 Q. Well, the jury probably doesn't know. What's the effect?
6 Let them know.

7 A. I don't understand what you mean. That's what I was
8 saying.

9 Q. What do you get out of snorting a pill?

10 A. I guess the same thing as drinking and everything else.
11 You feel differently.

12 Q. Do you get high?

13 A. It's a high.

14 Q. Okay. So were you getting high and don't -- now you're
15 not getting high anymore?

16 A. I didn't get high from snorting the pills, though, is
17 what I'm saying, from those pills.

18 Q. Right. But do you feel better now --

19 A. I feel much better, if that's what you're asking.

20 Q. Were you better on pills or off of pills?

21 A. Oh, off of pills.

22 MR. RAMSEYER: Okay. Thank you.

23 THE COURT: All right. Cross-examination?

24 ///

25 ///

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Parsley, when you first got up here, you said that you had had -- just a second here, let me get this hooked up.

You had had a motor vehicle accident; is that correct?

A. I had.

Q. Okay. When was that motor vehicle accident?

A. I had one before I started with Dr. Smithers. About the -- I actually had one while I was seeing Dr. Smithers also.

Q. Okay. So you had had two motor vehicle accidents. Do you recall when they were? When was the first one?

A. The first one was in 2006.

Q. Okay.

A. But the other one was in 2016.

Q. Okay. If you said on the form that your accident happened in 2008, is that possible that's when it was instead of --

A. Yeah, it could be 2008. I'm sorry, sir.

Q. That's fine.

Now what happened in the 2008 motor vehicle accident? Describe it, if you would, to the jury.

A. That's when I -- I had to do physical therapy for a while. I was injured with my back and my neck.

1 Q. Okay. And how was the -- how did the physical therapy --
2 did it help you any?

3 A. The physical therapy didn't, actually. I had to quit, it
4 actually made it worse.

5 Q. Okay. So it didn't help at all; is that correct?

6 A. Correct.

7 Q. Did you try anything else to help it? Did you go to
8 chiropractor or anything like that?

9 A. No.

10 Q. And so that had happened in 2008; is that right?

11 A. Yes.

12 Q. Okay. And did you go to any other clinics or anything?
13 Had you been on any other medications?

14 A. I had. I had went to a wellness clinic in West Virginia.
15 Williamson, West Virginia, for my motor vehicle accident.

16 Q. Okay. And what was wrong as a result of the motor
17 vehicle accident? What was hurting?

18 A. It was my back and -- it was my back and my neck.

19 Q. Okay. Do you have some pain in your knee as well?

20 A. I had pain in my -- I had knee surgery.

21 Q. Okay. Why did you have the knee surgery?

22 A. There was infection that set up in it. I don't remember
23 much about it. I was in ICU for nine days.

24 Q. When was the knee surgery, do you recall?

25 A. I'm not -- I don't remember the exact date. It was after

1 the car wrecks, though. I want to say about three years after
2 it, three or four years after it.

3 Q. So it was well before you went to see Dr. Smithers?

4 A. Well before I went to see Dr. Smithers, yes.

5 Q. So you continue to have pain in your left knee and lower
6 back; right?

7 A. Yes.

8 Q. And when you met with Dr. Smithers, did you go over that
9 with him?

10 A. I did.

11 Q. Okay. And he talked with you?

12 A. Yes, he did.

13 Q. Okay. Told you -- sat down and listened to you, listened
14 to all your complaints?

15 A. Yes, he did.

16 Q. Okay. Did he fill out a form or anything while he was
17 asking stuff?

18 A. Yes.

19 Q. Did he do any testing and stuff --

20 A. He actually -- yes.

21 Q. Bend you over, felt your back?

22 A. Every time.

23 Q. Okay. Now, you also, I think, had an MRI of the lumbar
24 that would have been back in about 2006, -7; does that sound
25 about right?

1 A. That sounds about right.

2 Q. Okay. Did you present that to him?

3 A. I'm pretty sure I did.

4 Q. Okay. And you also had an MRI of your back, I think, in
5 2011; does that sound right?

6 A. Yes.

7 Q. What about any X-Rays?

8 A. I had X-Rays. I believe I gave those to him also.

9 Q. And the X-Rays were of what?

10 A. Of my back and my neck.

11 Q. Did you have also have X-Ray of your knee?

12 A. I did.

13 Q. Okay. And I think then you also scheduled an MRI maybe
14 in 2016. And I think that may have been why you were seeing
15 Dr. Smithers, isn't it?

16 A. Correct.

17 Q. Did he help you set that up?

18 A. He was helping me set that up.

19 Q. Okay. So within this you had legitimate pain, didn't
20 you?

21 A. I did.

22 Q. And you were getting treatment. You'd sought out --

23 A. I was trying, yes.

24 Q. You sought out physical therapy and that didn't help.

25 A. Correct.

1 Q. And I think you indicated to Dr. Smithers that medicine
2 seemed to be the thing that helped you most; is that right?

3 A. Yes.

4 Q. Okay. And the -- do you recall what all you told
5 Dr. Smithers that was wrong with you and that was hurting on
6 that initial visit?

7 A. I can't recall all of it. I'm sure that I told him about
8 my neck and my back, and I'm sure I told him about my knee.

9 Q. Okay. Well, if you said you had shooting and stabbing
10 pains; does that sound right?

11 A. That sounds correct.

12 Q. Had you had any numbness?

13 A. Yeah, I still have numbness.

14 Q. Okay. And I think you -- do you recall what you said the
15 pain level was that you were under at the time?

16 A. I don't know. It was probably pretty high.

17 Q. Okay.

18 A. It was right -- that was after that second car wreck.

19 Q. Okay. And if you had said that the worst of it was 9 and
20 right now it was an 8; does that sound right?

21 A. That probably sounds about right.

22 Q. Okay. And was that true?

23 A. That was true at the time, yes.

24 Q. Okay. And so you were talking to Dr. Smithers. He met
25 with you, examined you, did all of that, and then you say he

1 prescribed it -- or told it down correctly as to what your
2 pain level was?

3 A. Yes.

4 Q. And did -- and at that point in time did you sign any
5 kind of an agreement with Dr. Smithers?

6 A. I'm sure we signed paperwork with him, so. I'm sure I
7 did.

8 Q. You signed a lot of paperwork, didn't you?

9 A. Yes.

10 Q. Signed a form stating that he agreed to be your doctor;
11 right?

12 A. Yes.

13 Q. Do you recall signing an Opioid Maintenance Agreement?

14 A. I'm not sure of the name of it. We signed documents
15 saying we would not see other doctors, take other medicine,
16 yes.

17 Q. That document said you would be truthful, you couldn't
18 sell or do anything with your medicine, went over all the
19 different things about how you should take your medication,
20 didn't it?

21 A. Yes.

22 Q. Things that would happen if you violated that agreement,
23 didn't it?

24 A. Yes.

25 Q. And you understand whenever you're talking to a doctor

1 it's very, very important that you be honest with him.

2 A. Yes.

3 Q. Okay. Because he has to know to be able to make that
4 treatment; right?

5 A. Yes.

6 Q. And now, I think there was a time -- was there a time
7 that Dr. Smithers was helping you to try to get knee surgery?

8 A. Yes.

9 Q. Did he set that up for you --

10 A. He was in -- he was making contact with my --

11 Q. Orthopedic?

12 A. Orthopedic, yes. They were keeping in contact with each
13 other.

14 Q. Okay. So your orthopedic knew you were on pain medicine?

15 A. Yes. And he knew where they come from.

16 Q. All right. And when you went to Dr. Smithers, did you
17 have to go through pill counts and stuff?

18 A. Yes.

19 Q. Okay. Who did the pill counts?

20 A. Wendell, I believe is his name.

21 Q. Okay. Wendell Wilson; does that sound right?

22 A. I'm not for sure the last name. I just know his name was
23 Wendell.

24 Q. Okay. And you went through drug testing?

25 A. Yes.

1 Q. And Dr. Smithers advised you of the risk of taking opioid
2 medication and everything at the time; is that right?

3 A. Yes.

4 Q. Okay. And based upon that, you started taking what was
5 prescribed, didn't you?

6 A. Yes.

7 Q. Okay. And I think you said you took it as prescribed; is
8 that right?

9 A. I tried to.

10 Q. Okay. When you say you tried to, what does that mean?

11 A. That means that I could have missed one or -- you know,
12 forgot the evening times.

13 Q. Okay.

14 A. Or been gone for the day, didn't have it with me.

15 Q. Okay. So you may have missed one from time to time is
16 what you're saying?

17 A. Yes.

18 Q. But pretty much --

19 A. Pretty much I tried to take it right.

20 Q. Okay. You tried to take it regularly.

21 And so as you began to take this, did you begin to
22 have relief from your pain?

23 A. I did.

24 Q. Okay. And do you recall going back to Dr. Smithers on
25 several occasions?

1 A. Yes.

2 Q. Okay. Do you recall a visit where -- on June the 20th of
3 2016, do you recall that visit?

4 A. I would have to be told more. I don't --

5 Q. If you give me just a minute.

6 A. I went several months in a row.

7 Q. Let me ask you another question or two. My computer is
8 giving me fits over here, I apologize.

9 So when you signed the Opioid Maintenance Agreement,
10 you agreed that you weren't going to sell your pills or
11 anything like that; is that right?

12 A. Yes.

13 Q. And you agreed to tell the doctor if you had any problems
14 with it; right?

15 A. Yes.

16 Q. I think you said earlier you may have thought it was a
17 little high, the dosage?

18 A. The dosage may have been a little high. But at the time
19 I didn't think it was. So maybe it wasn't at the time. I was
20 in greater pain at that time, also, so. I'm not a doctor.

21 Q. But you didn't tell Dr. Smithers that, did you?

22 A. At the time I was getting relief. It was --

23 Q. Okay.

24 A. It was getting me up.

25 Q. I think, in fact, on 6-20 when you went to the visit, you

1 said that the medication was giving you about 20 percent
2 relief; does that sound right?

3 A. Yes.

4 Q. Okay. Your initial visit was on 4-21-16.

5 A. Okay. That was just two months after I started then.

6 Q. Yes.

7 A. Okay.

8 MR. WILLIAMS: Can I get this put on the screen?

9 I think its Exhibit 25, I believe. JP-25.

10 The exhibit is JP, the page number is 25.

11 BY MR. WILLIAMS:

12 Q. Ms. Parsley, what I'm going to show you, I have to scroll
13 up, I apologize, a little bit on it. I'm not as high tech as
14 the U.S. Attorneys' office here.

15 Does this look like a pain inventory sheet that you
16 may have filled out at Dr. Smithers's office?

17 A. Yes.

18 Q. Okay. What's the date on it?

19 A. 6-20 of 2016.

20 Q. Okay. And that's your name; correct?

21 A. Correct.

22 Q. Okay. And then does that have your date of birth? Is
23 that up there at the top?

24 A. It does.

25 Q. Okay. All right. And I think on this pain form -- where

1 does it say the pain is located?

2 A. On my left side of my neck and -- my neck, my lower back,
3 and my left knee.

4 Q. Okay. All right. And there's a note there. Do you see
5 the note right beside of that?

6 A. I do.

7 Q. Okay. Can you read what that note says?

8 A. I can't. But I can see for left knee at the bottom.

9 Q. Okay. Does it probably say something about that they're
10 trying to schedule your left knee surgery?

11 A. Yes, sir. Scheduling surgery for left knee.

12 Q. Okay. I'm going to scroll up a little bit more here.
13 What does it say that your pain at the worst in the 24 hours
14 was?

15 A. At the worst, 8.

16 Q. What was it at the best -- or the least?

17 A. Seven.

18 Q. Okay. Was that true at the time?

19 A. That was true at the time, yes.

20 Q. Okay. All right. I'm going to scroll on down just a
21 little bit.

22 Now I'm going to ask you to look at No. 8. Okay.
23 It says, "In the past 24 hours how much relief from treatment
24 or medication provided?" What did you answer at that time?

25 A. Twenty percent.

1 Q. Okay. Does that sound correct?

2 A. If that's what I wrote, that's what --

3 Q. Okay. And so you were getting about 20 percent relief at
4 that point; is that correct?

5 A. Correct.

6 Q. And I'll try to go real slow here. Make everybody dizzy.

7 Okay. I want to ask you, this would be JP, Exhibit
8 JP, page 21.

9 Okay. And what does this form show? Is this your
10 name?

11 A. This is my name, yes.

12 Q. Okay. And what's the date of the visit there?

13 A. 7-18 of 2016.

14 Q. Okay. And still showing pretty much the same.

15 A. It's showing the same areas marked as for my pain.

16 Q. Okay. Also has a sticky note on there. Did you owe
17 Dr. Smithers some money at that time?

18 A. I did.

19 Q. Okay. So he allowed you to pay whenever you needed to,
20 didn't he?

21 A. He allowed me to pay. He told me to bring it in when I
22 had it.

23 Q. So he continued to treat you even when you didn't have
24 the money; is that right?

25 A. Correct.

1 Q. Okay. All right. I'm going to scroll down.

2 This is a month later, okay. On -- this would be
3 page 22. JP, page 22.

4 And on that, paragraph No. 8 says, "In the past
5 24 hours, how much relief from pain treatments and medication
6 has been provided?" What did you check at that point?

7 A. Sixty percent.

8 Q. Okay. So you had improved from pain relief 40 percent in
9 a month; right?

10 A. Correct.

11 Q. Okay. And so with this, you began to -- fair to say that
12 what you were taking was helping, wasn't it?

13 A. Correct.

14 Q. At least that's what you were relating to Dr. Smithers;
15 right?

16 A. Yes.

17 Q. Okay.

18 MR. WILLIAMS: Madam Clerk, you can take that off
19 now if you want to.

20 Thank you.

21 BY MR. WILLIAMS:

22 Q. Now, I think you said that you had been counseled on
23 other options by Dr. Smithers, hadn't you? about other things
24 that you could do besides the opiate meds? Do you recall him
25 telling that?

1 A. I don't recall. But we talked intensively every time I
2 did go.

3 Q. I'm sorry. How long did you talk the first visit?

4 A. The first visit was probably close to two hours.

5 Q. So he spent a long time with you, didn't he?

6 A. A very long time.

7 Q. Okay. Got very detailed about what your problems were,
8 didn't he?

9 A. Correct.

10 Q. Okay.

11 MR. WILLIAMS: Your Honor, may I have just a moment?

12 THE COURT: Yes, sir.

13 MR. WILLIAMS: No further questions, Your Honor.

14 THE COURT: All right. Redirect?

15 **REDIRECT EXAMINATION**

16 BY MR. RAMSEYER:

17 Q. Ma'am, you thought Dr. Smithers was the greatest thing
18 since sliced bread, didn't you?

19 A. I thought he was a good doctor at the time, correct.

20 Q. Yeah. What does "good doctor" mean where you live?

21 A. I was looking for pain relief and I was getting it.

22 Q. Okay. And what does "good doctor" mean where you live?
23 People that are pill seekers talk about a good doctor, what do
24 they mean?

25 A. I don't know.

1 Q. You do know. You need to answer truthfully, please.

2 A. I don't know.

3 Q. Well, you told Dr. Smithers you'd been -- you'd taken
4 Lortab in the past, you'd taken Percocets, oxycodone, Opana
5 ER, you'd taken MS Contin. Where did you get all that stuff?

6 A. At the doctors -- different --

7 Q. They all good doctors, too?

8 A. I don't think I took everything on that list, though,
9 that you just said.

10 Q. That's what --

11 A. From other doctors.

12 Q. So if it's in the list, Dr. Smithers just made it up.
13 You didn't tell him you'd been taking those things; right?

14 A. I took some of those, I don't know if I took all of
15 those, though.

16 Q. Did you tell him you didn't like MS Contin? You didn't
17 like the morphine?

18 A. Morphine I knew hadn't worked on me from just hospital
19 stays.

20 Q. Did you tell him you didn't like morphine?

21 A. I told him it made me sick. Because that's normally what
22 it done to me in the hospital.

23 Q. Okay. You didn't want morphine, did you?

24 A. No.

25 Q. You wanted oxycodone and oxymorphone, Opana; right?

1 A. I just didn't want something that I knew that made me
2 sick.

3 Q. Right. You wanted the same thing your husband was
4 getting; oxycodone and oxymorphone, right?

5 A. I believe that he got the same thing that I got. I
6 didn't ask for any -- any -- I didn't ask for anything in
7 particular is what I'm saying.

8 Q. Well, you didn't have to because he offered you the same
9 thing your husband got; right?

10 A. He wrote me my prescription the first time. I mean, I
11 never --

12 Q. So you went the first time -- at the time you went, you
13 weren't taking anything, were you?

14 A. No.

15 Q. He didn't say, hey, let's try Advil. Let's try just
16 seeing how it goes for a couple weeks. Let's try something
17 low level. Let's do Tylenol with codeine. He didn't do any
18 of that. He just jumped, boom, oxycodone and oxymorphone;
19 right?

20 A. I think that I took those first and then the patches, I'm
21 not sure. I'd have to look in my file. He wrote me patches,
22 too.

23 Q. Patches were later; correct?

24 A. I think it was the second -- I'd have to look at my file
25 to be 100 percent correct, though.

1 Q. You told him the pharmacy wouldn't fill the patch, so he
2 just kept you on the oxycodone and the oxymorphone.

3 A. No. I tried the patches. I was allergic to them.

4 Q. You were allergic to the patch?

5 A. I have a scar on my chest as of now.

6 Q. Okay. So if the file says it was due to a problem with
7 the pharmacy, that's just made up; right?

8 A. Excuse me?

9 Q. If the form -- if the patient file says the reason you
10 didn't get the butalbital was that the pharmacy would have to
11 order it, that's not true; right?

12 A. The pharmacy didn't have them to fill when I went the
13 fill them. I had to fill them, like, sometime later.

14 Q. Okay. Then you just quit taking them?

15 A. No. I had to take them back to the pharmacy because I
16 was allergic to them. Then he called the other medication in.

17 Q. Okay. Describe the exam table you were in -- the exam
18 room you went into when you went to Dr. Smithers.

19 A. It was a -- he didn't have an exam table, I don't think.

20 Q. He didn't, did he?

21 A. But he had the chairs --

22 Q. You had a folding chair; right?

23 A. I don't remember -- it may have been folding, I don't
24 recall.

25 Q. You're in this terrible, awful, contractible pain and he

1 has you sit in a folding chair for two hours, how did you feel
2 about that?

3 A. It was frustrating.

4 Q. Yeah, that's terrible. What kind of person would do
5 that? Did you ask him, you're dealing with these people with
6 all this terrible pain, you don't even have a comfortable
7 chair to sit on? Did you ask him that?

8 A. No.

9 Q. Why not?

10 A. I don't know.

11 Q. You didn't want to do anything that would deter him from
12 writing the pills you wanted, did you?

13 A. I do -- to be honest with you, when I was in there, I
14 just wanted to get out of there because it was very slow, so.

15 Q. Let me just ask you, ma'am, it was a folding chair you
16 were sitting in, wasn't it?

17 A. Correct.

18 Q. And you say for hours; right?

19 A. The first visit was for a few hours.

20 Q. You said it was two hours you were with him in this
21 folding chair.

22 A. I don't remember it being a fold-up chair, so I can't
23 really recall.

24 Q. Okay. So what kind of chair was it?

25 A. I can't recall. I can't remember.

1 MR. RAMSEYER: Okay. Your Honor, if I could just
2 have a moment.

3 BY MR. RAMSEYER:

4 Q. All right. Ma'am, that's a picture --

5 MR. RAMSEYER: Is it possible to show it just for
6 the witness first?

7 BY MR. RAMSEYER:

8 Q. Ma'am, do you remember being in an exam room like that?

9 A. I don't remember that exam room.

10 Q. Okay.

11 MR. RAMSEYER: Try one of the other ones.

12 BY MR. RAMSEYER:

13 Q. I guess, just to speed things along, you don't remember
14 ever being on the exam table?

15 A. No, I don't remember the exam table.

16 Q. Just some chair?

17 A. Just some type of chair.

18 Q. And you'd sit there for hours; correct?

19 A. Yes.

20 Q. Your husband would sit there for hours; correct?

21 A. We didn't -- we wasn't seen together, so.

22 Q. You weren't seen together?

23 A. I think one time we were seen together. But other than
24 that, we always went in separately.

25 Q. On different days?

1 A. No, same day, just different rooms.

2 Q. So one time you both got examined -- not examined, you
3 got talked to by the doctor at the same time; right?

4 A. We told him we didn't care to be in the same room.

5 Q. You told him you didn't want to be in the same room?

6 A. No, we didn't care to be in the same room.

7 Q. Okay. So he just talked to you both at the same time.

8 A. He saw one, then the other one.

9 Q. But you said --

10 A. He didn't see us at the exact same time. One time I sat
11 beside him.

12 Q. I'm asking about the one time he saw you both together.

13 A. Yes, I was just telling you. He would see one of us and
14 then the other one stepped over to another chair and he got
15 closer to the doctor and vice versa. I can't remember who
16 went first.

17 Q. You were both in the room together?

18 A. Yes.

19 Q. So because he's kind, caring, and compassionate; right?

20 A. At the time I thought he was a good doctor.

21 Q. Because of that, he gave you a cut rate. Since he was
22 really seeing the two of you at one time, he only charged you
23 300 instead of 600.

24 A. No.

25 Q. Of course, not. He charged you \$600, didn't he?

1 A. Correct.

2 MR. RAMSEYER: No further questions.

3 THE COURT: Anything further?

4 **RECROSS-EXAMINATION**

5 BY MR. WILLIAMS:

6 Q. Ms. Parsley, you went to Dr. Smithers because you were
7 hurting, didn't you?

8 A. Yes.

9 Q. And you went there because you -- you continued to go
10 because you were getting relief from it, weren't you?

11 A. Correct.

12 MR. WILLIAMS: No further questions.

13 THE COURT: All right. Thank you, ma'am.

14 You may step down.

15 MR. RAMSEYER: We'd ask that she be subject to
16 recall, Your Honor.

17 THE COURT: Ma'am, you may leave now. But you may
18 be asked to come back. If so, you must come back. Do you
19 understand that?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right. Thank you, ma'am.

22 All right. You may call your next witness.

23 MR. JUHAN: Your Honor, the United States calls
24 James Long.

25 THE CLERK: If you'll come forward, please.

1 If you'll raise your right hand.

2 Do you solemnly swear that the testimony you're
3 about to give in this case shall be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: You may take the stand.

7 **JAMES MORGAN LONG, JUNIOR,**

8 Called as a witness herein by the Government, having been
9 first duly sworn, was examined and testified as follows:

10 **DIRECT EXAMINATION**

11 BY MR. JUHAN:

12 Q. Hello, sir.

13 A. Howdy.

14 Q. Please tell the jury what your full name is.

15 A. James Morgan Long, Junior.

16 Q. How do you spell Morgan?

17 A. M-o-r-g-a-n.

18 Q. And you live in Mount Sterling, Kentucky; correct?

19 A. Correct.

20 Q. What is your source of income?

21 A. At the moment, it is social security.

22 Q. And there came a time where you saw Dr. Joel Smithers;
23 correct?

24 A. Yes, I did.

25 Q. Okay. Briefly, I want to talk about before you were

1 going to see Dr. Smithers. Before that time did you ever go
2 see a doctor in Ohio?

3 A. I did.

4 Q. And what ended up happening to that doctor in Ohio?

5 A. I really don't know. I think him and his partner got
6 into some kind of ruckus. I don't even know what it was
7 about.

8 Q. Okay. Do you remember being interviewed by DEA agents on
9 April 17th, 2018, or thereabouts?

10 A. Of what year?

11 Q. 2018.

12 A. I don't really know. I can't remember that.

13 Q. Okay. Do you ever remember talking to any federal agents
14 ever?

15 A. Yeah.

16 Q. Okay. Do you ever remember telling those agents that the
17 doctor you saw in Ohio got shut down?

18 A. Yeah.

19 Q. So after this doc in Ohio gets shut down, is that when
20 you go start to see Dr. Smithers?

21 A. It was a little while after it.

22 Q. Shortly after it?

23 A. I don't remember the dates, but it was a while.

24 Q. Okay.

25 A. I'm talking a year or so.

1 Q. Okay. And when you went and saw Dr. Smithers, you saw
2 him in Martinsville, Virginia?

3 I need you to verbally --

4 A. I'm trying to remember. I'm not sure about the towns.

5 Q. Okay. Well, let's talk about states then. At some point
6 you came to Virginia to see him.

7 A. Yes, sir.

8 Q. Okay.

9 A. Was it Martinsville? I'm not sure.

10 Q. Well, if it would help, you remember testifying in grand
11 jury under oath in this case; right?

12 A. Yeah.

13 Q. And so if I showed you your testimony, it might help you
14 remember where Dr. Smithers was located?

15 A. Mm-hmm.

16 Q. Okay.

17 MR. JUHAN: Your Honor, if I might have permission
18 to approach the witness with his grand jury testimony?

19 THE COURT: Yes, sir.

20 MR. JUHAN: I'm directing you to page 5,
21 Mr. Williams.

22 BY MR. JUHAN:

23 Q. Page 5, line 16. Are you okay reading -- you read and
24 write English okay?

25 A. Yeah, barely.

1 Q. Okay.

2 A. Sixteen. I can't see without my glasses.

3 Q. Do you have your glasses with you today?

4 A. I do not.

5 Q. That's fine.

6 A. But I did talk to him.

7 Q. So if the records reflect you went to Martinsville, you
8 would be fine agreeing with that?

9 A. I would.

10 Q. Okay. And at the time you went to see Dr. Smithers, you
11 were on disability at that point, too?

12 A. I think I hadn't got it yet.

13 Q. Okay. So did you have any source of income at that time?

14 A. No. I was living with my father, taking care of him.

15 Q. All right. And you also saw Dr. Smithers in West
16 Virginia at some point; correct?

17 A. Yes.

18 Q. Did you ever describe Dr. Smithers as "not doctorish"?

19 A. Well, he's doctorish to me. He helped me.

20 Q. Well, I guess I want to try to have you recall about your
21 interview with the federal agents. Did you ever describe to
22 them or tell them that Dr. Smithers wasn't "doctorish"?

23 A. I don't recall that.

24 Q. Well, do you think that -- well, you don't have your
25 glasses with you, that's right.

1 A. Yeah.

2 Q. Okay. Let's talk about how you came to know about -- how
3 you came to know about Dr. Smithers.

4 A. How I knew?

5 Q. Yes. Yes.

6 A. By word of mouth.

7 Q. So who tipped you off about Dr. Smithers?

8 A. Steve -- I can't think of his last name. Steven. I
9 can't think of his last name.

10 Q. What about a guy named Ricky Jessie?

11 A. That was his nephew, Steve was.

12 Q. Okay. Do you remember if Ricky Jessie ever got you an
13 appointment with Dr. Smithers?

14 A. He did.

15 Q. And when you went to see Dr. Smithers, who went with you?

16 A. Jessie -- Rick Jessie. I always known him as just Rick.

17 Q. Just Rick. Okay. Can we just call him Rick and agree
18 we're talking about Rick Jessie?

19 A. Yes.

20 Q. What about Rick Jessie's wife, did she go with you too?

21 A. Yeah, she rode once.

22 Q. This drive you took from Kentucky to Martinsville,
23 Virginia, that's about six hours, isn't it?

24 A. Roughly.

25 Q. One way?

1 Is that a "yes"?

2 A. Yes.

3 Q. Okay. So prior to the time you went with Rick Jessie to
4 see Dr. Smithers, how many times in your life had you ever met
5 Rick Jessie?

6 A. Twice, three times maybe.

7 Q. And who paid --

8 A. Now, prior I hadn't.

9 Q. You never met him?

10 A. Hmm-mmm.

11 Q. So you met him for the first time to go 12 hours
12 roundtrip to see Dr. Smithers?

13 A. Yes.

14 Q. Who paid for your food on this trip to see Dr. Smithers?

15 A. Rick did.

16 Q. Who paid for your office visit on this 12-hour trip to
17 see Dr. Smithers?

18 A. Rick.

19 Q. How much was that?

20 A. \$300.

21 Q. Did he pay cash?

22 A. I didn't see it, I don't know.

23 Q. Well, you know you didn't pay.

24 A. I'm positive I didn't.

25 Q. And who paid for the pills that Dr. Smithers wrote for

1 you?

2 A. Rick.

3 Q. In fact, Rick went to the pharmacy to get him for you.

4 A. He did. We was all in the same vehicle.

5 Q. Who ended up getting the pills once they were filled?

6 A. I think he did once and I did once. I think I went
7 twice.

8 Q. And he got about a third of your pills on one trip?

9 A. I must -- roughly. I didn't count them out. I'm not
10 sure. But roughly.

11 Q. And so -- I mean, it's fair to say this is an arrangement
12 that basically you're paying Rick to take you down there with
13 your pills?

14 A. Yes.

15 Q. Okay. So, I mean, this is kind of obvious perhaps, but
16 what did you get out of going to Dr. Smithers?

17 A. I got relief for my back pain.

18 Q. You got pills?

19 A. Yes.

20 Q. What did Mr. Jessie get out of it?

21 A. I don't know.

22 Q. Well, he got the pills, didn't he?

23 A. He got his third, I guess, yeah.

24 Q. Okay. You said he's hurting?

25 A. Who?

1 Q. Sorry, I just didn't hear your last answer.

2 A. Who you talking about?

3 Q. We'll move on. It's okay.

4 A. Okay. I didn't catch that.

5 Q. That's okay.

6 Why did you stop going to Dr. Smithers with Rick
7 Jessie?

8 A. I didn't like the arrangement.

9 Q. In fact, you knew that arrangement wasn't right, didn't
10 you?

11 A. I did.

12 Q. You knew it wasn't right for Rick Jessie to get your
13 medicine.

14 A. I did. We had no arrangement to begin with. But in the
15 end, we did.

16 Q. And so you cut it off because it was wrong.

17 A. I did.

18 Q. Sir, isn't it true that one of the reasons you drove
19 12 hours roundtrip to go see Dr. Smithers is that no one
20 around where you live would give you the pills Smithers would
21 give you?

22 A. That's right.

23 MR. JUHAN: Thank you, sir. If you'd just answer
24 any questions that Mr. Williams might have.

25 THE COURT: All right. Cross-examination?

1 MR. WILLIAMS: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. WILLIAMS:

4 Q. Hello. How are you today, sir?

5 A. I'm good. Thank you.

6 Q. Now, you were going to Dr. Smithers, you started I think
7 in August 27 of 2015; does that sound right?

8 A. Yeah.

9 Q. Okay.

10 A. I can't remember the dates, but its close.

11 Q. And at the time you indicated that you were having back
12 pain; is that right?

13 A. Yes.

14 Q. Still having back pain?

15 A. Yes, I am.

16 Q. Okay. And what was that from?

17 A. I turned a farm truck over in '95.

18 Q. Okay. 1995?

19 A. Mm-hmm.

20 Q. Okay. What happened when you did it? Describe it to the
21 jury, if you would.

22 A. My back pain?

23 Q. No, the one when the tractor turned over.

24 A. I was working hay on the hillside, hit a ground hog hole
25 and it flipped over.

1 Q. What happened to you?

2 A. I got slipped disk, herniated disk, bulging disk in my
3 neck and lower back.

4 Q. Okay. And did you have surgery or anything on that?

5 A. No. They want to do it now, laser surgery, but I've not
6 let them yet.

7 Q. Why not?

8 A. I'm not fond of the surgery part.

9 Q. Don't trust it?

10 A. No.

11 Q. Okay. All right.

12 Now, with respect to this, you went to Dr. Smithers
13 in August of -- August, 2015; right?

14 A. I think that's the day.

15 Q. All right. And you indicated to him at that time when
16 you went in -- did they take your blood pressure, do all that
17 kind of stuff?

18 A. Yes. Yes, they did.

19 Q. Checked your pulse?

20 A. Yeah.

21 Q. Okay. Checked your oxygen level?

22 A. Yep.

23 Q. Okay. Checked your weight?

24 A. I'm not sure. They might have.

25 Q. I'm not going to sit here and embarrass you by saying

1 what your weight was, I'll leave that alone. But they might
2 have taken your weight, is that fair to say?

3 A. That's fair to say. I don't remember.

4 Q. You just don't recall it.

5 A. Yeah.

6 Q. Okay. Now, at the time you were -- what would you say --
7 what would you say your pain was at that time?

8 A. I'm going to say 7 or 8, as they do it.

9 Q. Okay. If you would have said the worst pain you got was
10 9, your present pain was about 6; is that about right?

11 A. That's about right.

12 Q. Is it what it runs today?

13 A. Not as bad as it used to be.

14 Q. Okay.

15 A. I deal with it.

16 Q. You went in -- did you also have a fall in 2007?

17 A. I did.

18 Q. Okay. What was the fall about?

19 A. I think that was on ice.

20 Q. Okay. You slipped on ice?

21 A. Mm-hmm.

22 Q. Okay. What happened with it, do you recall?

23 A. I went to the emergency room. They gave me some kind of
24 shot. I think it was Dilaudid or something. That cured it
25 for a while.

1 Q. Okay. Now, as far as these type accidents that you had,
2 had you tried other type things to see if it would help?

3 A. Not really. I'd lay on the floor, stuff like that.

4 Q. Okay. But you've had -- would it be fair to say that
5 you'd had shooting, stabbing pain, numbness?

6 A. It is.

7 Q. Okay.

8 A. Still do today.

9 Q. Okay. It bothers -- increases it when you try to bend or
10 changes in the weather; is that accurate?

11 A. Yes.

12 Q. What about if you try to lift objects?

13 A. I ain't supposed to lift over 35 pounds.

14 Q. What about even sitting, standing, walking, does that
15 bother you too?

16 A. It does.

17 Q. Did it bother you then?

18 A. It did.

19 Q. You told Dr. Smithers that, didn't you?

20 A. I did.

21 Q. I think that you indicated here that -- you've never had
22 physical therapy?

23 A. On my back, no.

24 Q. Okay. What about on anything else?

25 A. Yes.

1 Q. What about from the 2000 fall? What did you have
2 physical therapy for?

3 A. I had a stroke.

4 Q. When was that?

5 A. I had to learn to walk, talk, everything again.

6 Q. Okay. Understand.

7 Now with respect to this, you didn't quit going
8 because of anything Dr. Smithers did, did you?

9 A. No, sir.

10 Q. You quit going because of Rick.

11 A. Yes. Dr. Smithers helped me.

12 Q. Okay. And you never told Dr. Smithers anything about
13 what Rick was doing, did you?

14 A. I did not.

15 Q. Now, did you present an MRI to Dr. Smithers?

16 A. I did.

17 Q. Okay. Was that done in 2014; does that sound right?
18 Pretty close?

19 A. I can't remember the dates. But I had one, yeah.

20 Q. Okay. That would be in the general area of when it might
21 have been?

22 A. Yeah.

23 Q. Okay. What about X-Rays or anything?

24 A. I had X-Rays, but I don't know which I took.

25 Q. Okay. Would it be possible you took both of them?

1 A. It's possible.

2 Q. Okay. What about a CT scan?

3 A. I still got 'em.

4 Q. What about a CT scan?

5 A. I've had them too.

6 Q. That was in your back?

7 A. Yeah.

8 Q. Okay.

9 A. And chest, I believe it was. I'm not -- I can't

10 remember.

11 Q. Now, you were having real pain, weren't you?

12 A. I was.

13 Q. Still having real pain?

14 A. Mm-hmm.

15 Q. And you stated that the medications Dr. Smithers gave you

16 were helping, weren't they?

17 A. It was. It relieved me.

18 Q. Okay. When it relieved you, what did it allow you to do?

19 A. I could walk further and longer, pick up stuff.

20 Q. Okay.

21 A. I mean, I could work a little more, do things.

22 Q. You like to work?

23 A. I don't say I like it, but I can do it.

24 Q. That's a pretty fair statement.

25 A. Yeah.

1 Q. Okay. But allows you to -- sometimes you have to do
2 things around the house and stuff --

3 A. Exactly.

4 Q. -- just to keep things up. And this allowed you to do
5 daily-type living things, didn't it?

6 A. Mm-hmm.

7 Q. Now when you went in to see Dr. Smithers, he met with
8 you?

9 A. Mm-hmm.

10 Q. Talked with you for a while, didn't he?

11 A. He did.

12 Q. Okay. How long did he talk with you on the first visit?

13 A. I'm going to say 30 minutes maybe.

14 Q. Okay.

15 A. He took notes.

16 Q. Okay. You took notes?

17 A. No, he did.

18 Q. He did. Okay.

19 Did you sign an agreement there to be a patient and
20 everything? Signed a bunch of paperwork and stuff?

21 A. I did, mm-hmm.

22 Q. And he went over what the opiate -- the risk of opiate
23 addiction and all that kind of stuff was, didn't he?

24 A. Yes.

25 Q. Okay. And what you're saying is that he gave you this

1 medicine and you had a legitimate medical need; right --

2 A. Mm-hmm.

3 Q. -- for this medicine?

4 A. I did.

5 MR. WILLIAMS: May I have a moment, Your Honor?

6 No further questions at this time.

7 THE COURT: Any further questions?

8 MR. JUHAN: No, Your Honor.

9 THE COURT: All right. Thank you, sir. You may
10 step down.

11 THE WITNESS: Thank you. You-all have a blessed
12 day.

13 MR. JUHAN: We'd ask he be subject to recall,
14 Your Honor.

15 THE COURT: Yes, sir.

16 Sir, before you leave -- can you hear me all right?

17 THE WITNESS: Yes, sir.

18 THE COURT: You may leave now, but you may be asked
19 to come back.

20 THE WITNESS: Okay.

21 THE COURT: And if you are, you're required to come
22 back. Do you understand?

23 THE WITNESS: Yeah, but when, I mean?

24 THE COURT: We don't know.

25 THE WITNESS: Oh, you'll let me know.

1 THE COURT: But you'll be -- yeah, you'll be
2 notified.

3 Thank you. You may leave.

4 THE WITNESS: Thank you-all.

5 THE COURT: All right. Ladies and gentlemen, we're
6 going to take a luncheon break at this time. If you'll be
7 back in one hour. And if you'll follow the bailiff out.
8 Please remember my instructions to you.

9 (Proceedings held in the absence of the jury.)

10 THE COURT: All right. Anything that counsel needs
11 to take up with the Court?

12 All right. If not, we'll be in recess for one hour.

13 (Proceedings suspended at 12:03 p.m. and resumed at 1:06
14 p.m.)

15 THE COURT: Are we ready for the jury?

16 MR. RAMSEYER: Yes, Your Honor.

17 THE COURT: Let's have the jury in.

18 (Proceedings held in the presence of the jury.)

19 THE COURT: All right. Ladies and gentlemen, we're
20 ready to go again.

21 You may call your next witness.

22 MR. RAMSEYER: Chris Young.

23 THE CLERK: If you'll come forward, please.

24 Raise your right hand.

25 Do you solemnly swear that the testimony you're

1 about to give in this case shall be the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: You may take the stand.

5 **CHRISTOPHER YOUNG,**

6 Called as a witness herein by the Government, having been
7 first duly sworn, was examined and testified as follows:

8 **DIRECT EXAMINATION**

9 BY MR. RAMSEYER:

10 Q. Please state your name.

11 A. Christopher Young.

12 Q. And how are you employed?

13 A. For the Henry County Sheriff's Office as an investigator
14 on the DEA Task Force.

15 Q. Henry County, is that in the Martinsville area?

16 A. Yes.

17 Q. All right. And how long have you been a law enforcement
18 officer?

19 A. Almost 19 years.

20 Q. And you say you're a task force officer with the DEA now;
21 is that right?

22 A. Yes.

23 Q. How long have you done that?

24 A. I guess ten years or better.

25 Q. Okay. As part of your duties with that, were you

1 involved in a search that was executed at Smithers Community
2 Healthcare Clinic in Martinsville, Virginia?

3 A. I did.

4 Q. And I'd like to show you what's been marked as
5 Government's Exhibit 39, if I could.

6 And I ask you if this is -- if you can identify this
7 as a vehicle that you searched there at the Smithers's clinic
8 on March 7 of 2017?

9 A. Yes, sir.

10 MR. RAMSEYER: Okay. I'd ask for admission of
11 Government's Exhibit 39 at this time, Your Honor.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 39 received.)

14 BY MR. RAMSEYER:

15 Q. I'd like to show you Government's Exhibit 40. And just
16 ask if that's a rear view of the same vehicle?

17 A. Yes.

18 MR. RAMSEYER: Move for admission of Government's
19 Exhibit 40 and ask that it be published to the jury.

20 THE COURT: It will be admitted.

21 (Government's Exhibit 40 received.)

22 THE COURT: Do you want to show both of them?

23 MR. RAMSEYER: We can just show this one,
24 Your Honor, at this time.

25 THE COURT: All right.

1 MR. RAMSEYER: All right.

2 BY MR. RAMSEYER:

3 Q. And I'd like to show you Government's Exhibit 41.

4 MR. RAMSEYER: Do you want me to go through -- or
5 show the jury while I'm asking?

6 Defense is okay with us just showing it to him at
7 the same time the jury sees it, Your Honor.

8 THE COURT: All right.

9 BY MR. RAMSEYER:

10 Q. Government's Exhibit 41, can you identify that?

11 A. Yes. That's the interior of the Toyota Camry.

12 Q. Okay. The same vehicle we saw the outside?

13 A. Yes.

14 MR. RAMSEYER: All right. And move for admission of
15 Government's Exhibit 41 at this time, Your Honor.

16 THE COURT: It will be admitted.

17 (Government's Exhibit 41 received.)

18 MR. RAMSEYER: And Government's Exhibit 42, please.

19 BY MR. RAMSEYER:

20 Q. Okay. Can you explain to the jury what that is?

21 A. That is the glove compartment of the Toyota Camry with
22 stacks of money in the glove compartment.

23 Q. You say "stacks of money," is it cash?

24 A. Yes, cash.

25 Q. When you got that cash, did you seize it?

1 A. Yes. I personally did not --

2 Q. When I say "you", I mean law enforcement.

3 A. Yes.

4 Q. So to be clear, you weren't the only person there, were
5 you?

6 A. That's correct.

7 Q. But law enforcement seized that cash; is that correct?

8 A. That's correct.

9 Q. If we can go to Exhibit 43.

10 Move to admit Government's Exhibit 42, please.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 42 received.)

13 BY MR. RAMSEYER:

14 Q. And Government's Exhibit 43, is that just a close-up of
15 what was in 42?

16 A. Yes.

17 MR. RAMSEYER: Move to admit Government's
18 Exhibit 43.

19 THE COURT: It will be admitted.

20 (Government's Exhibit 43 received.)

21 MR. RAMSEYER: And if we could go to Government's
22 Exhibit 92, please.

23 BY MR. RAMSEYER:

24 Q. All right. Can you identify what that is, Government's
25 Exhibit 92?

1 A. These are items found in the Toyota Camry.

2 Q. Okay. And can you see up here, my eyesight is going, but
3 maybe --

4 MR. RAMSEYER: Can we zoom that part up maybe?

5 BY MR. RAMSEYER:

6 Q. Can you read out for the jury who the subscriber is on
7 that Blue Cross/Blue Shield is?

8 A. Angela M. Smithers.

9 Q. Is it Angel?

10 A. Angel, sure.

11 MR. RAMSEYER: Go back. And this Triple A Plus
12 card, can we blow that up?

13 BY MR. RAMSEYER:

14 Q. Who does that indicate that belongs to?

15 A. Joel A. Smithers.

16 MR. RAMSEYER: Okay. Go to the Advantage card.

17 BY MR. RAMSEYER:

18 Q. That is an Advantage card; is that right?

19 A. Yes.

20 Q. Can you read that?

21 A. Joel A. Smithers.

22 Q. All right. And this USAA credit card.

23 A. It's Joel Smithers as well.

24 Q. And a PayPal business debit card, what's the name on
25 that?

1 A. Joel Smithers.

2 Q. All right. So those cards you've identified were all
3 photographed in Exhibit 92; is that correct?

4 A. That's correct.

5 Q. And those were all taken from the same car as the cash
6 and the pills we're going to talk about in a minute; is that
7 right?

8 A. That's correct.

9 MR. RAMSEYER: Move for admission of Government's
10 Exhibit 92.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 92 received.)

13 BY MR. RAMSEYER:

14 Q. And now I'd like to show you Government's Exhibit 44.

15 Can you identify what that is?

16 A. A backpack that's in the passenger floorboard of the
17 Toyota Camry.

18 Q. All right. If I can show you 46.

19 MR. RAMSEYER: I'd move to admit 44.

20 THE COURT: It will be admitted.

21 (Government's Exhibit 44 received.)

22 BY MR. RAMSEYER:

23 Q. All right. Can you identify what that is?

24 A. That's the pill bottles that were found in the backpack.

25 Q. Okay. In that picture it shows -- is there a large

1 bottle and then three smaller bottles?

2 A. That's correct.

3 MR. RAMSEYER: Okay. Move to admit Government's
4 Exhibit 46.

5 THE COURT: It will be admitted.

6 (Government's Exhibit 46 received.)

7 MR. RAMSEYER: Can I have a moment, Your Honor?

8 BY MR. RAMSEYER:

9 Q. So with those pill bottles, were their various pills
10 inside those bottles?

11 A. Yes.

12 Q. And the bottles, were they -- are they prescription
13 bottles or are they like a supplement or something else? Do
14 you remember?

15 A. I'm not sure. I cannot testify to that.

16 Q. Okay. But, in any event, those bottles, were they seized
17 at the time?

18 A. Yes.

19 Q. I'm going to hand you what we've marked as Government's
20 Exhibit 98.

21 MR. RAMSEYER: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 BY MR. RAMSEYER:

25 Q. Show you that. It's got four pill bottles -- or four

1 bottles and a Sucrets box.

2 A. Yes.

3 Q. And are those items that were taken from that backpack?

4 A. They are, yes.

5 MR. RAMSEYER: I'd move for admission of that
6 exhibit, Your Honor, which is Exhibit No. 98.

7 THE COURT: It will be admitted.

8 (Government's Exhibit 98 received.)

9 BY MR. RAMSEYER:

10 Q. You also played a role in the investigation in
11 downloading text messages obtained from various phones; is
12 that correct?

13 A. That's correct.

14 Q. And the way the program worked that you dealt with, it
15 would take those text messages and put them into a usable
16 format so you could read them.

17 A. Yes.

18 Q. And when -- on those printouts, it will show a phone
19 number and then identifying information behind it. Where does
20 that come from?

21 A. It comes from the phone.

22 Q. So could you explain what that means?

23 A. It puts a specific person's name in. They have to enter
24 it themselves with the number. Just like if my name was in
25 there, it would be Christopher Young, just whatever the person

1 on the phone programmed it as.

2 Q. So, for instance, if it's Joel Smithers's phone, if he
3 has put into his phone a contact, Darryl Williams and the
4 phone number, then it's going to show up that phone number
5 goes with Darryl Williams; is that correct?

6 A. That's correct.

7 Q. And you downloaded various cell phones that were obtained
8 at the time of the search; is that right?

9 A. Yes. Most of them were Apple products.

10 Q. Apple products. iPhones?

11 A. iPhones, yes.

12 MR. RAMSEYER: May I have a moment, Your Honor?

13 THE COURT: Yes.

14 BY MR. RAMSEYER:

15 Q. So those bottles, when you seized those bottles -- at the
16 time you seized them and put them into an envelope, were the
17 pills still in them?

18 A. Yes.

19 Q. Okay. And you provided them to other law enforcement
20 officers; is that right?

21 A. That's correct.

22 MR. RAMSEYER: Thank you.

23 THE COURT: Cross-examination?

24 MR. WILLIAMS: May I have just a second, Your Honor?

25 No questions, Your Honor.

1 THE COURT: All right. Thank you, sir. You may
2 step down.

3 I take it this witness may be excused?

4 MR. RAMSEYER: Yes, Your Honor.

5 THE COURT: You may be excused, sir. Thank you.

6 MR. RAMSEYER: Next witness is Peter Bodai.

7 THE CLERK: If you'll come forward, please.

8 If you'll raise your right hand.

9 Do you solemnly swear that the testimony you're
10 about to give in this case shall be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: You may take the stand.

14 **PETER BODAI,**

15 Called as a witness herein by the Government, having been
16 first duly sworn, was examined and testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. RAMSEYER:

19 Q. Please state your name.

20 A. My name is Peter Bodai.

21 Q. Mr. Bodai, where do you live?

22 A. Christiansburg, Virginia.

23 Q. Okay. At some point did you come to work for this
24 gentleman over here, Dr. Smithers?

25 A. Yes, sir.

1 Q. And when you worked for them, where did you work for him?

2 A. I worked in Martinsville, Virginia.

3 Q. At the time you went to work for him, where were you
4 living?

5 A. West Virginia.

6 Q. Where in West Virginia?

7 A. Beckley. Beckley, West Virginia.

8 Q. Okay. Approximately how long of a drive was it from
9 Beckley to Martinsville?

10 A. I would say a good hour and 45 minutes.

11 Q. How did you go? How did you get there in an hour and
12 45 minutes?

13 A. Driving.

14 Q. I know, but how? What routes did you take?

15 A. 77 to 4 -- I don't know the route specifically. But it's
16 off of Princeton. It's off of exit Princeton.

17 Q. Okay. So you go to 460?

18 A. 460.

19 Q. Then after 460 takes you out to Blacksburg, how would you
20 get to Martinsville?

21 A. Just -- just follow the road into Martinsville.

22 Q. Did you go from Roanoke and then down 220 or --

23 A. Yeah, go straight to Roanoke. Yes.

24 Q. Did you really make it in an hour and 45 minutes?

25 A. Well, I would get up early in the morning. There was no

1 traffic.

2 Q. Okay. So you weren't going the speed limit?

3 A. Give or take, you know.

4 Q. Correct?

5 A. Correct.

6 Q. Okay. So, in any event, how old are you?

7 A. Thirty-nine.

8 Q. And explain to the jury how you came to work for
9 Dr. Smithers.

10 A. It started off with a phone call from the Beaver -- the
11 Beaver Clinic.

12 Q. Well, let's back up then. We're going to back up further
13 than that. At some point were you a manager at Radio Shack?

14 A. That is correct.

15 Q. Where was that?

16 A. Oak Hill, West Virginia.

17 Q. And did you have any experience in the healthcare
18 business at that point, healthcare field?

19 A. No, sir.

20 Q. All right. And just to speed things up, at some point
21 did you get some phone call and offered you a job at an
22 office?

23 A. Correct.

24 Q. Medical office?

25 And what medical office was that that you were going

1 to work for?

2 A. PPPFD.

3 Q. PPPFD.

4 A. Or the Hope Clinic.

5 Q. PPPFD Hope Clinic.

6 A. Correct.

7 Q. And what's PPPFD stand for?

8 A. Patients Physicians Pharmacists Finding Diversion.

9 Q. Okay. Did you at some point come to find that name to be
10 ironic?

11 A. Over time, correct.

12 Q. All right. So -- and you went to work for the Hope
13 Clinic. Where was that?

14 A. That was in Beaver, West Virginia.

15 Q. All right. And what did you do there at the Hope Clinic?

16 A. I was just as a -- an assistant for human resources.

17 Q. Okay. Were you on the business side?

18 A. Yes. Correct.

19 Q. Okay. And did you -- the Hope Clinic itself, was it a
20 place where people went to for controlled substances?

21 A. That is correct.

22 Q. Pain pills?

23 A. Correct.

24 Q. Okay. Approximately how long did you work there in
25 Beaver?

1 A. Approximately five and a half years, say.

2 Q. So when did you start?

3 A. Let's see -- I can't remember off the top of my head.

4 2014, '13. I'm not certain of the year.

5 Q. Well, are you from West Virginia?

6 A. Not originally, no.

7 Q. Where are you from originally?

8 A. Astoria Queens.

9 Q. Queens --

10 A. New York, yes.

11 Q. The only reason I ask you that was at some -- maybe it

12 will help you with times. At some point did you move from

13 Queens, New York, to West Virginia?

14 A. It was sometime? I'm sorry, rephrase it.

15 Q. Was there sometime when you moved from Queens, New York,

16 to West Virginia? Do you remember when you moved here to West

17 Virginia?

18 A. To West Virginia, yes.

19 Q. When was that?

20 A. That was in 2001.

21 Q. So you've been here for a long time before you started

22 working at the Hope Clinic?

23 A. It was about 15, close to 15 years I lived in West

24 Virginia.

25 Q. Okay. So at some point, was it before 2015 that you

1 started working at the Hope Clinic?

2 A. That may sound -- that sounds correct.

3 Q. Okay. You don't really know.

4 A. Not certain by time frame.

5 Q. Okay. At some point did you -- were you going to lose
6 your job at the Hope Clinic?

7 Can you answer out loud, please.

8 A. I'm sorry?

9 Q. Did there come a time when you were going to lose your
10 job at the Hope Clinic?

11 A. At the same time they were transitioning or moving the
12 clinic to Wytheville.

13 Q. Okay.

14 A. So they asked me to move.

15 Q. Well, the Hope Clinic had various locations in West
16 Virginia; right?

17 A. Yes. Correct.

18 Q. And some of them were getting -- they were getting shut
19 down; is that right?

20 A. Correct.

21 Q. And so you know Mark Radcliff?

22 A. Yes, sir.

23 Q. Who is Mark Radcliff?

24 A. He is the CEO -- or was the CEO of PPPFD.

25 Q. And was he affiliated with Hope Clinic?

1 A. Yes, sir.

2 Q. And he really ran it, didn't he?

3 A. Yes, sir.

4 Q. So at some point did he tell you that he was going to
5 open a clinic in Wytheville, Virginia, so he'd be outside of
6 West Virginia?

7 A. Not by word of mouth. I just heard it from other
8 employees.

9 Q. Okay. So, in any event, is that what happened?

10 A. It eventually happened.

11 Q. Did a -- and was it called Hope Clinic in Wytheville,
12 Virginia?

13 A. Yes, it was Hope -- or --

14 Q. At some point did it change its name?

15 A. It changed its name afterwards, yes.

16 Q. What did it change its name to?

17 A. I can't recall the name --

18 Q. Was it Covenant?

19 A. That sounds right. That sounds correct.

20 Q. Okay. So what made you go from Hope Clinic in Beaver to
21 Wytheville, Virginia to the Hope Clinic's Last Covenant?

22 A. Coming -- going from West Virginia to Wytheville?

23 Q. Yeah.

24 A. They were transitioning. They were moving the Hope into
25 the -- into the Wytheville building and then changing the

1 name.

2 Q. Okay. And so -- basically, somebody directed you to go.

3 A. Yeah, that's correct.

4 Q. You didn't volunteer, did you?

5 A. No, I didn't volunteer.

6 Q. So did you start working in Wytheville?

7 A. Yes.

8 Q. At the Hope Clinic, Covenant Clinic.

9 And what happened there? What was your job there?

10 A. Well, I became a receptionist.

11 Q. So did you start dealing with patients there?

12 A. Correct.

13 Q. Yeah. And approximately how long did you work there in
14 Wytheville?

15 A. Wasn't long. I would say maybe two and a half -- I would
16 say around there, two and a half years plus.

17 Q. Okay. And at some point did that clinic -- was it going
18 to close?

19 A. Yes.

20 Q. Okay. And so were you involved with getting those people
21 that had been getting pills from the Wytheville Clinic
22 someplace else to get pills from?

23 A. I'm sorry, repeat the question again.

24 Q. Were you involved with the effort to get the people that
25 were getting pills in Wytheville another place that they could

1 go to to get pills from?

2 A. Yes, some of them.

3 Q. What was your role?

4 A. The phone calls. Just answering the phones.

5 Q. What were you --

6 A. And directing them -- directing the messages to whoever
7 was in charge, manager.

8 Q. Where did you tell patients to go?

9 A. It was a tossup from different locations.

10 Q. Did you send any of the patients to Martinsville to
11 Dr. Smithers?

12 A. That is correct.

13 Q. Okay. Well who told you to do that?

14 A. It was an anonymous request. It was a hush-hush. We
15 were told not to say anything.

16 Q. Well, explain that.

17 A. Well, as a receptionist, we were just told that -- to
18 direct certain patients to Martinsville. And they didn't
19 specify name of a doctor or anything like that, it was kept
20 anonymous.

21 Q. I mean, how did you tell the patients where to go?

22 A. Address. We gave 'em a printout of a Google location.

23 Q. In Martinsville?

24 A. In Martinsville.

25 Q. And that was for Dr. Smithers?

1 A. Yes, sir.

2 Q. Okay. And why was it hush-hush?

3 A. I don't know. It wasn't clear. It was unclear as to
4 why.

5 Q. Okay. Did you ever call Dr. Smithers's office while you
6 were working at Wytheville?

7 A. No, sir. We told the patients to call them.

8 Q. Okay.

9 A. The clinic.

10 Q. All right. And so at some point when that Wytheville
11 office was winding down, did you end up going to work for --
12 at Dr. Smithers's office?

13 A. Right after -- right after the doctor in Wytheville lost
14 his license.

15 Q. Okay. So the doctor in Wytheville lost his license and
16 so that was going to close.

17 A. Pretty much. There was no need for extra hands, extra
18 employees.

19 Q. So how did you get from Wytheville to Dr. Smithers's
20 office?

21 A. Well, prior to that I was preparing myself to collect
22 unemployment until I received a phone call from Beaver
23 location, Beaver Clinic.

24 Q. Beaver, the Hope Clinic?

25 A. PPPFD.

1 Q. PPPFD.

2 A. It was something in the admin office.

3 Q. Okay. And what did they tell you to do?

4 A. They just told me to help the doctor there in
5 Martinsville.

6 Q. Dr. Smithers?

7 A. They needed a rec -- yes.

8 Q. How did it start off? Were you going to be paid by
9 Dr. Smithers? Or some arrangement how you were going to be
10 paid?

11 A. The way it was arranged, it was all done with human
12 resources, or payroll at the PPPFD. It would just be partial,
13 and then from there it would be carried on. After I get, you
14 know, disconnected from -- you know, PPPFD, then I would get
15 paid by Dr. Smithers.

16 Q. So you go to Smithers's clinic. And when you go there
17 the first day, what happens? I mean, is Dr. Smithers
18 expecting you? Or do you just say I'm here? What happened?

19 A. Just started to do my -- my usual clerical work.

20 Q. Did you talk to Dr. Smithers before you started working
21 there?

22 A. Yes.

23 Q. Okay. What did you talk to him about on the phone?

24 A. Just the operation of what's needed on the reception
25 desk.

1 Q. Did you call and say, I'm applying for a job? Or I know
2 you talked to somebody else and I'm coming? What did you say?

3 A. No, I just -- I traveled from West Virginia to --

4 THE COURT: The question is did he know that you
5 were coming? Did he -- was it a complete surprise to him when
6 you walked in?

7 THE WITNESS: No, I'm sure he was aware.

8 THE COURT: So he had been told by somebody else
9 that you were coming to work as the receptionist.

10 THE WITNESS: Correct. Correct.

11 THE COURT: Okay.

12 BY MR. RAMSEYER:

13 Q. And my question, I thought you said earlier you talked to
14 him on the phone before you went there. Did you or not? Did
15 you talk to Dr. Smithers on the phone before you showed up?

16 A. No, I have not.

17 Q. You did not?

18 A. And I don't recall having talked to Dr. Smithers, no.

19 Q. Okay. I misunderstood you. I thought that's what you
20 said. So you're saying somebody tells you to go there, you
21 show up.

22 A. Correct.

23 Q. So you walk in the door, what happens?

24 A. I was given a role to be a receptionist, to start
25 working --

1 Q. Did you introduce yourself?

2 A. Yes. Yes.

3 Q. Okay. I'm Peter Bodai.

4 A. Yes.

5 Q. I'm here to be your receptionist, or what happened?

6 A. Well, I don't know word for word. But it just --
7 immediately started working.

8 Q. Okay. And who did you report to?

9 A. Dr. Smithers.

10 Q. Who else worked there when you started working?

11 A. An auditor named Wendell Wilson.

12 Q. An auditor. Like a CPA? A CPA is a Certified Public
13 Accountant, was he an accountant?

14 A. No. No. No.

15 Q. Was he the only other person that worked there?

16 A. Just him and Dr. Smithers and me.

17 Q. And approximately when did you start working?

18 A. Approximate date?

19 Q. Yes. At PPPFD. Excuse me, at Smithers's clinic.

20 A. I'd say right after Wytheville, was 2000 -- I'm trying to
21 go back in time.

22 Q. We can come back to that later.

23 A. Oh, yeah.

24 Q. Think about it --

25 A. That would be fine.

1 Q. -- if you don't remember what it was exactly.

2 When you started working there, who was paying for
3 you to work in Smithers's clinic?

4 A. At the time it was PPPFD.

5 Q. So this place in Beaver West Virginia was paying you to
6 work at Dr. Smithers's clinic; is that right?

7 A. For a time period, yes.

8 Q. Like a trial period or something?

9 A. Correct.

10 Q. All right. And how were you paid when the place in
11 Beaver was paying you?

12 A. I was paid direct deposit.

13 Q. Direct deposit. You were an employee?

14 A. As an employee.

15 Q. Took your taxes out, all that?

16 A. Correct.

17 Q. A W-2 at the end of the year?

18 A. Right.

19 Q. All right. How long did the trial period last,
20 approximately?

21 A. I'd say a month, maybe.

22 Q. A month.

23 Okay. At the clinic, what did you do during that
24 trial period?

25 A. Just did my cler -- just did clerical work, filing.

1 Q. I understand. But nobody here was there except
2 Dr. Smithers. So tell them what happened. What did you do?
3 What was your job?

4 A. Basically answer phone calls, charts, arranging charts,
5 just getting things organized on the desk.

6 Q. Did you take money?

7 A. Taking money.

8 Q. Okay. And what kind of money was taken? Was their
9 insurance? Did you have to deal with insurance?

10 A. No, sir.

11 Q. So who told you --

12 A. Just the fees.

13 Q. -- about how the clinic was going to work in Smithers's
14 office?

15 A. I'm sorry. I didn't catch what you said.

16 Q. Well, you went to work at this office. You had certain
17 duties, but you didn't know what the duties were until
18 somebody told you what they were; right?

19 A. Correct.

20 Q. So did Dr. Smithers tell you what your duties were?

21 A. Correct.

22 Q. What did he tell you your duties were?

23 A. They were collecting fees was one thing; charts,
24 arranging charts, or filing charts; taking or giving patients
25 assessment forms to fill out. Pretty much that's the role --

1 that's the big role.

2 Q. Okay. Who told you how much the patients had to pay?

3 A. Well, it was Dr. Smithers.

4 Q. Okay. What did he tell you how much the patients had to
5 pay?

6 A. Well, whatever the amount was on, you know, for a new
7 patient.

8 Q. How much was it?

9 A. I don't know off the top of my head.

10 Q. Was it \$450?

11 A. That sounds about right.

12 Q. Okay. And what about for a returning patient?

13 A. It would be less than that amount. Maybe 125 or --

14 Q. Was it 300?

15 A. I don't --

16 Q. Was it 300?

17 A. That sounds close -- yeah, yes.

18 Q. Okay. So, and did that all go to Dr. Smithers?

19 A. No. There's half -- a percentage goes to Dr. Smithers
20 and a percentage goes to Wendell Wilson.

21 Q. Okay. So did Wendell get \$75 for each visit?

22 A. That sounds right. Yes.

23 Q. Okay. So of the 450, 75 went to Wendell, 375 went to
24 Dr. Smithers; does that sound right for a new visit?

25 A. That sounds right.

1 Q. For return visits, 225 for Dr. Smithers, 75 for Wendell;
2 does that sound right?

3 A. Yeah.

4 Q. So this is during your trial period still. About how
5 long was that?

6 A. I would say about 30 days.

7 Q. Okay. About 30 days. And when your trial period was
8 coming to an end, did you ask anybody, what's going to happen?

9 A. Well, no, I was given a proposition.

10 Q. Okay. Who propositioned you?

11 A. Dr. Smithers.

12 Q. Okay. And what did he offer you?

13 A. The amount or just the --

14 Q. What did he say was going to happen? The trial period
15 was coming to an end, were you going to continue the trial
16 period or were you going to be paid by PPPFD? Was there some
17 other arrangement?

18 A. The work I'd been doing, you know, taking care of
19 clerical work and keeping -- manning the reception desk, I was
20 given the proposition to continue.

21 Q. Okay. And what was the new financial arrangement going
22 to be?

23 A. It was about --

24 Q. It was what?

25 A. Paid in cash.

1 Q. You were going to get paid in cash, that's what he
2 offered you; is that right?

3 A. Correct.

4 Q. So before you were getting direct deposit from Beckley,
5 taxes taken out. He was going to offer you cash; is that
6 right?

7 A. Correct.

8 Q. The whole time you worked there, was he the one that
9 directed what you did?

10 A. Correct.

11 Q. Okay. And did he tell you when you had to be there?

12 A. Time frame?

13 Q. Yeah, when you had to be at work.

14 A. Yeah, I was never late. I was always on time.

15 Q. You were his employee; right?

16 A. Correct.

17 Q. But the arrangement with you was that you wouldn't be an
18 employee; right?

19 A. Correct.

20 Q. And what did he say how you were going to be treated?

21 A. As far as contractor.

22 Q. The money.

23 A. Yeah.

24 Q. You were going to be an independent contractor.

25 A. Independent contractor.

1 Q. And you were going to get paid \$640 a week cash --

2 A. Correct.

3 Q. -- is that right?

4 A. Correct.

5 Q. Did that seem odd to you?

6 A. Yes.

7 Q. Did you get paid cash at Radio Shack?

8 A. No.

9 Q. Okay. And so how did you get paid each week? Who
10 actually paid you?

11 A. Dr. Smithers at the end of the day.

12 Q. Did he? Or did you just take it out of the money that
13 came?

14 A. No, Dr. Smithers.

15 Q. So he'd just count out \$640 for you at the end of the
16 week.

17 A. Correct.

18 Q. All right. Now, at some point was there another employee
19 that came towards the end of your time there that came to work
20 there?

21 A. Yes.

22 Q. Okay. Who was that?

23 A. I don't know his last name. But his name is Juan.

24 Q. First name is Juan; is that correct?

25 A. Yes.

1 Q. What was his prior work experience before he came to work
2 in this medical clinic?

3 A. He was working in a Mexican restaurant.

4 Q. As a waiter?

5 A. Yes.

6 Q. Now, at Dr. Smithers's clinic while you worked there, the
7 whole time you worked there, did every patient get a pain
8 pill?

9 A. Yes.

10 Q. Every single one?

11 A. (Nods head.) Yes.

12 Q. Okay. And you got to see the patients in the waiting
13 area; right?

14 A. Yes.

15 Q. Did you ever see them out in the parking lot? in the
16 parking lot?

17 A. Unless I went out there, but -- to throw trash out, yes.

18 Q. Okay. Were patients urinating in the parking lot?

19 A. I didn't witness that.

20 Q. Well, did you see the evidence of that?

21 A. The signs, yes. The -- well, what do you mean out in
22 the -- you have to rephrase that. I didn't see any urine on
23 the outside of the parking lot.

24 Q. Did you see urine --

25 A. There was trash. There was a lot of trash out there.

1 Q. Okay. Did you notice where these patients were coming
2 from that were going to Martinsville, Virginia?

3 A. Through their records, they came from different states;
4 Tennessee, Ohio, West Virginia.

5 Q. Kentucky?

6 A. Virginia.

7 Q. Kentucky?

8 A. Kentucky.

9 Q. Was there -- were there any local patients? Were there
10 people that, like, lived in Martinsville that came here?

11 A. Yes.

12 Q. Really? Are you sure?

13 A. From Martinsville?

14 Q. Yes.

15 A. I mean, there were all kinds of patients. It was hard to
16 keep up. I mean, it -- I mean, the patients were --

17 Q. Weren't most of the patients from other states?

18 A. Most of them, yes.

19 Q. All right. And did it -- was it pretty apparent to you
20 what was going on?

21 A. Yes.

22 Q. And what was going on?

23 A. They were prescription drugs.

24 Q. Prescription drugs what?

25 A. Given to patients. Implicit drugs given to patients.

1 Q. I just didn't hear what you said.

2 A. Explicit drugs given to patients, I guess. Narcotics.

3 Q. Narcotics. Prescription narcotics were given to patients
4 that were coming from these other states.

5 A. Yeah.

6 Q. Is that right?

7 A. Correct.

8 Q. Let's talk about Dr. Smithers at the office. Did he come
9 to the office when it opened? Like in the morning, was he
10 there when you got there?

11 A. Not when I got there, no, as far as time.

12 Q. Okay. Was -- when would he get to the office, typically?

13 A. At what time?

14 Q. Yes.

15 A. 7:00, I would say.

16 Q. 7:00 a.m.?

17 A. 7:00 a.m.

18 Q. Were there times when he got there a lot later than that?

19 A. It was over time, yeah, it got later.

20 Q. The longer you worked there, the less he came to work on
21 time; isn't that right?

22 A. Correct.

23 Q. And what time would he come into work sometimes while you
24 were there, towards the end?

25 A. Sometimes lunch time.

1 Q. Noon?

2 A. To noon. Noon.

3 Q. Sometimes 2:00 p.m.; is that right?

4 A. Late afternoon.

5 Q. Okay. And were there times he didn't come at all?

6 A. Sometimes, yes.

7 Q. So you were there, Wendell was there, patients were
8 there, he wasn't there; right?

9 A. Correct.

10 Q. So what happened on those days? When he's not even there
11 and these patients come, did you examine the patients?

12 A. No.

13 Q. Did Wendell examine the patients?

14 A. Did he examine them? Unless he did his job -- his
15 responsibility.

16 Q. I mean, he's not a -- he's not healthcare provider, is
17 he?

18 A. He is not, no.

19 Q. So who made -- how did those people get prescriptions if
20 Dr. Smithers wasn't there?

21 A. How?

22 Q. Yes. How?

23 A. There was a prescription pad that was already signed off
24 by the doctor.

25 Q. So the doctor left a pre-signed prescription pad?

1 A. Pre-signed.

2 Q. So you got a stack of prescriptions, doctor's signatures
3 on all of them, but it doesn't have the person's name or the
4 drug; is that right?

5 A. That is correct.

6 Q. And then who put that information in?

7 A. That information gets filled out with Wendell.

8 Q. Wendell put it in.

9 Did you ever do that?

10 A. No, sir.

11 Q. Okay. So Wendell did it.

12 And the \$300 that the patients were paying, was that
13 for an office visit?

14 A. \$300?

15 Q. Yeah. The 225 to Dr. Smithers and 75 to Wendell, that
16 was for an office visit; right?

17 A. Yes.

18 Q. The patients had to pay it even if they never saw the
19 doctor; right?

20 A. Correct.

21 Q. So, really, wasn't it just a \$300 for a prescription?

22 A. \$300, for -- yes.

23 Q. It was \$300 to get your prescriptions; right?

24 A. Yes. Yes.

25 Q. It wasn't for an office visit, was it?

1 A. No, it was just for prescriptions.

2 Q. And were there times that prescriptions were mailed to
3 people?

4 A. Correct.

5 Q. And why was that done? Who directed that to be done?

6 A. Dr. Smithers.

7 Q. Okay. And did you do that sometimes? Did you mail them?

8 A. Yes, sir.

9 Q. Okay. So what would Dr. Smithers tell you about that?
10 About mailing the prescriptions? I mean, how would you know
11 who to mail them to and what --

12 A. The address was given to me and then I would take the --

13 Q. Who gave you the address?

14 A. The address would be given to Dr. Smithers and then I
15 would take that to the FedEx depot to mail.

16 Q. So Dr. Smithers would give you the address for the
17 prescriptions to be mailed?

18 A. Yes.

19 Q. And then you'd do it?

20 A. Yes.

21 Q. And did those people have to pay for those prescriptions
22 too?

23 A. Yes.

24 Q. How did they do that since they weren't there? How did
25 they get their payment to the doctor?

1 A. Credit card over the phone.

2 Q. Okay. Did they wire sometimes? Wire money?

3 A. Could you rephrase? Wiring?

4 Q. Yeah. Like, Walmart to Walmart, or MoneyGram, or Western
5 Union.

6 A. I would say, yes. Usually I'm always using the credit
7 card machine, so.

8 Q. So when you yourself did it, you had a credit card
9 machine, they'd read you off the numbers and you'd put them
10 in?

11 A. Yes.

12 Q. Did Dr. Smithers sometimes get money wired to him
13 directly from the patients?

14 A. Unless it was MoneyGram'ed.

15 Q. That's what I'm saying. Did he sometimes get the money,
16 it went direct to him, didn't even go through you?

17 A. It's possible. I wouldn't have evidence.

18 Q. I know it's possible. Did he ever tell you about that?
19 Did patients tell you about?

20 A. No, sir. No, sir. I usually would take care of the
21 cash.

22 MR. WILLIAMS: I would object as to speculation if
23 he doesn't know.

24 THE COURT: I'm sorry?

25 MR. WILLIAMS: I would object to speculation if he

1 says he doesn't know.

2 MR. RAMSEYER: I think he just answered the
3 question. He doesn't know.

4 THE COURT: Yeah.

5 You don't know?

6 THE WITNESS: Correct.

7 BY MR. RAMSEYER:

8 Q. Okay. Now when you did those credit card transactions,
9 who instructed you how to do that?

10 A. Credit card machine was instructed by Dr. Smithers.

11 Q. Okay. Did you ever meet Dr. Smithers's wife?

12 A. No, sir.

13 Q. You never met his wife?

14 A. (Shakes head.)

15 Q. She never came to the office?

16 A. (Shakes head.)

17 Q. Did he ever talk about her?

18 A. Talked about her?

19 Q. Does he ever talk about his wife?

20 I'm not asking what he talked about.

21 A. No. No, not at all.

22 Q. Do you know who Angel Smithers is?

23 A. His wife?

24 Q. Okay.

25 A. But I -- I haven't heard much about her. I mean, I don't

1 know anything about Ms. Smithers.

2 Q. I understand. But that's his wife is Angel Smithers;
3 correct?

4 A. Yes.

5 Q. Now, have you ever gone to, like, a real doctor's office?

6 A. Yes.

7 Q. Okay. Like when you have a real medical problem?

8 A. Yes.

9 Q. Okay. And when you went there, did you see a nurse?

10 A. Yes.

11 Q. And they would weigh you, do other things?

12 A. Yeah.

13 Q. And at some point the doctor would see you; --

14 A. (Nods head.)

15 Q. -- is that right?

16 A. Correct.

17 Q. Was Dr. Smithers's clinic like that?

18 A. No, sir.

19 Q. Would you yourself go to Dr. Smithers if you had a
20 legitimate medical problem?

21 A. No, sir.

22 Q. Were there times the doctor was there until late in the
23 evening?

24 A. Correct.

25 Q. Would you have to stay when that happened?

1 A. Correct.

2 Q. So sometimes did you stay after midnight?

3 A. Yes.

4 Q. Did that seem strange to you?

5 A. Tiring, it was tiring too. It was very tiring.

6 Q. Did you have a list of pharmacies that you'd give to the
7 patients, or at least have available to tell patients what
8 pharmacies they could go to to get their prescriptions filled?

9 A. Did I have a list?

10 Q. Or was it just a list in your head?

11 A. I never had a list, no. No.

12 Q. Okay. Well, did patients ever ask you where they could
13 fill prescriptions?

14 A. Well, anything by which patients will -- they have to
15 contact Dr. Smithers.

16 Q. So if the patient would call and say, hey, I can't get
17 this filled. You would just say you need to talk to
18 Dr. Smithers?

19 A. Correct.

20 Q. Do you know where the patients were filling their
21 prescriptions?

22 A. It was just wherever they could get their hands on the
23 prescription.

24 Q. Did you ever hear of the Kentuckiana Pharmacy?

25 A. No, sir.

1 Q. Did you ever hear of Mike's Best Practices in Wytheville?

2 A. Yes, sir.

3 Q. What did you know about Mike's Best Practices?

4 A. All I know is he was a pharmacy that was opened up in the
5 Virginia area, Wytheville.

6 Q. Who opened it?

7 A. Mike.

8 Q. Did you ever meet Mike?

9 A. I've never seen him. I haven't seen him in person.

10 Q. Did you ever talk to him?

11 A. No, sir.

12 Q. Did Dr. Smithers meet with him?

13 A. Has he met with him?

14 Q. Yes.

15 A. I don't know.

16 Q. Well, did somebody come to your office at some point to
17 Smithers's clinic to talk about Mike's Best Practices?

18 A. Can you repeat that for me?

19 Q. Yes. Did somebody come to the clinic, Smithers's clinic,
20 to talk to Dr. Smithers about Mike's Best Practices?

21 A. Did someone?

22 No. I don't even think there was a meeting from
23 Mike's. But I know the Radcliffs did show that one day at
24 the --

25 Q. So Mark Radcliff --

1 A. -- at the Martinsville clinic.

2 Q. So Mark Radcliff, the guy from Beaver, Hope Clinic gets
3 shut down, he comes to the Smithers's clinic; correct?

4 A. Correct.

5 Q. Did he have something to do with Mike's opening up?

6 A. That would sound correct. That sounds correct.

7 Q. Were there times that you had to call a pharmacy and say,
8 hey, the patients have been here late, can you stay open so
9 they can get there?

10 A. Was there a time?

11 Q. Did you ever do that?

12 A. Was there a time?

13 I don't recall.

14 Q. Did the doctor ever do that that you heard?

15 A. The doctor would. That was his responsibility.

16 Q. Excuse me?

17 A. That was his responsibility.

18 Q. It's his responsibility to call a pharmacy and say stay
19 open for my patients?

20 A. Well, I don't recall me calling to a pharmacy --

21 Q. You say you didn't?

22 A. -- telling them to stay open.

23 Q. Did Dr. Smithers -- did you ever hear him on the phone
24 calling someplace and asking them can you stay open a little
25 bit late so these patients can get there?

1 A. Not that I can --

2 Q. You don't recall that?

3 A. -- recall that, no, sir.

4 Q. Now, the clinic itself -- these patients were supposedly
5 chronic pain patients in terrible pain; right?

6 A. Correct.

7 Q. And can you describe what the seats were like that they
8 were supposed to sit on?

9 A. Well, one was foldable chairs, metal foldable chairs.
10 And then the others were somewhat -- had some cushion.

11 Q. Some cushion?

12 A. A little narrower. Very narrow. Wasn't comfortable at
13 all.

14 Q. They weren't comfortable chairs, were they?

15 A. They weren't comfortable at all, no.

16 Q. And how long were patients sitting there in those
17 uncomfortable chairs?

18 A. Eight hours. It could be anywhere from 8 to 12.

19 Q. Eight to 12 hours that they could sit there?

20 A. Well, on certain times when Dr. Smithers didn't show up
21 it would be longer.

22 Q. All right. When you were living in West Virginia, how
23 did you work in Martinsville? Did you drive there every day?

24 A. Yes, sir.

25 Q. But you didn't, did you?

1 A. I drove there.

2 Q. Well, you drove there, but you actually were kind of
3 living at the clinic, weren't you, during the week?

4 A. Yeah. Yes, sir.

5 Q. There was a bed in one of the offices and --

6 A. Back rooms, yes. That was because I couldn't afford the
7 payment on, you know, on hotel.

8 Q. So before that had you been staying in a hotel?

9 A. Yes. Four days.

10 Q. So when does the clinic open, typically?

11 A. Four days a week.

12 Q. Monday through Thursday?

13 A. Monday through Thursday.

14 Q. So you'd come on Monday and stay until Thursday, usually?

15 A. Stay until Thursday -- Thursday, yes. Be home Friday.

16 Q. Okay. Did you know patients were selling their
17 prescriptions? Selling their pills?

18 A. Just by hearing them.

19 Q. You heard patients talking about it?

20 A. Hearing in the office.

21 Q. Excuse me?

22 A. In the office.

23 Q. So you'd be sitting at your reception place and you'd
24 hear them in the lobby talking about it?

25 A. Well, no. No. Not when I'm in the reception area. They

1 usually stay quiet unless someone talks about something.

2 Usually in the office, in the office with Wendell.

3 Q. When they were in the office with Wendell?

4 A. No. No. Just Wendell. Just Wendell usually -- he's --
5 I don't know how to explain it. He's a loud mouth. He talks
6 out loud.

7 Q. Oh, Wendell was saying the patients were selling their
8 prescriptions.

9 A. Yeah.

10 Q. Okay. And was there one patient in particular you knew
11 for sure was selling their prescription?

12 A. Yes.

13 Q. Who was that?

14 A. Shannon.

15 Q. Shannon Kovalski?

16 A. Correct.

17 Q. Okay. And she's from Ohio; right?

18 A. Correct.

19 Q. There wasn't anything wrong with her; right?

20 A. (Shakes head.) No.

21 Q. Is that correct?

22 She was healthy. She was fine. Correct?

23 A. Yes.

24 Q. Okay. And you, at some point, started entering in a
25 sexual relationship with her; is that right?

1 A. Yes.

2 Q. And had you ever known her before she came to the clinic?

3 A. No, sir.

4 Q. So you just met her at the clinic as a patient?

5 A. Yes, sir.

6 Q. And when she'd come down, would you stay with her at her
7 hotel room?

8 A. Yes.

9 Q. And there were certain -- there were urine drug tests
10 done every once in a while; is that right, on patients?

11 A. Correct.

12 Q. And what did she do so that it wouldn't show negative?

13 Because she wasn't really taking the pills, was she?
14 According to her -- she told you she wasn't taking the pills,
15 correct?

16 A. She wasn't. But she was taking half the doses.

17 Q. So she would take half a pill the day before an office
18 visit so that --

19 A. To have it in her system, correct.

20 Q. And did you ever tell Dr. Smithers about that?

21 A. No, sir.

22 Q. Why not?

23 Well, you didn't tell him because you wanted her to
24 be able to keep being your sexual partner; right?

25 A. (Nods head.)

1 Q. And you knew that if you told him and it was put in the
2 chart that you had said that, he'd have to fire her. How
3 could he justify that if someone had actually told him that
4 they were --

5 A. She would be a high risk.

6 Q. You knew that; right?

7 A. Yeah.

8 Q. You had to keep the facade that these patients were real.

9 A. Correct.

10 Q. Where did Dr. Smithers live while he was working there?

11 A. One of the Carolinas. North Carolina was the closest.

12 Q. North Carolina is the closest one to Virginia?

13 A. Right. Right.

14 Q. Now, did somebody tell you to recommend people to Mike's
15 Best Practices?

16 A. Yes.

17 Q. Who told you to recommend Mike's Best Practices to
18 people?

19 A. Dr. Smithers.

20 Q. Okay. Sometimes when Dr. Smithers wasn't in the office,
21 would he, like, call in while a patient was there?

22 A. When the patient's in the office?

23 Q. The patient is in the office, but Dr. Smithers wasn't in
24 the office. Were there times he'd call in?

25 A. Yes, sir.

1 Q. How often did that happen?

2 A. Most of the -- mostly -- most of the time.

3 Q. Most of the time he wasn't there. I don't understand
4 your answer there.

5 A. Yes, he -- I mean, patients on the time frame, you know,
6 they are in the clinic waiting for him.

7 Q. Right. They're waiting for him. He's not there.

8 A. Yeah.

9 Q. You'd call him and say hey, the patients are here, doc,
10 what should I tell them? Or what? What happened?

11 A. That gets coordinated with Wendell. Wendell had --
12 Wendell was communicating with Dr. Smithers.

13 Q. The patients would say I have an 8:00 appointment.
14 Dr. Smithers isn't there until noon. What did you tell the
15 patients?

16 A. Yes. I told them the doctor is not in yet.

17 Q. Okay. Were there ever times where the doctor just did
18 the exam over the phone? Like he'd talk -- while the person
19 was there in the office, he'd talk to them over the phone?

20 A. Yes, it was FaceTime.

21 Q. He'd FaceTime them sometimes?

22 How often did that happen?

23 A. Regularly.

24 Q. What do you mean "regularly"? Is that more times -- were
25 there more times he wasn't in the office than he was?

1 A. More times that he wasn't in the office.

2 Q. So on most days he was not in the office is what you're
3 saying?

4 A. Yes.

5 Q. Okay. So, like, in a 4-day week, how many days would he
6 come in usually?

7 A. Out of the four days?

8 Q. Yes.

9 A. Rephrase -- could you rephrase the question for me.

10 Q. Yeah. In a typical 4-day week, how many of those days
11 would Dr. Smithers actually be in the office?

12 A. Maybe one or two out of the four.

13 Q. Okay. And on those other days, you say sometimes he'd
14 FaceTime with the patient?

15 A. Yeah.

16 Q. Would you participate in those?

17 A. I do.

18 Q. How did you set them up? On your phone?

19 A. No, not on my phone. No. No. There was a dedicated
20 phone. A dedicated -- a separate phone used for that.

21 Q. Okay.

22 MR. RAMSEYER: I'd like to show the witness
23 Government's Exhibit 16.

24 The defense indicated they don't object to the jury
25 seeing them at the same time that the witness identifies them.

1 THE COURT: All right.

2 BY MR. RAMSEYER:

3 Q. Government's Exhibit 16, is that the outside of the
4 Smithers's clinic where you worked?

5 A. That is correct.

6 Q. All right. And let's go to Exhibit 17.

7 Is that a photo of the reception area? The chairs
8 you were talking about?

9 A. The outside, yes. Outside the reception booth.

10 Q. That's where people would wait --

11 A. Waiting.

12 Q. -- before they got into a back area?

13 A. For waiting, yes.

14 MR. RAMSEYER: 18, please.

15 BY MR. RAMSEYER:

16 Q. That's another picture of that area; is that right?

17 A. Correct.

18 Q. Is that -- back where that window is, is that where you
19 would sit?

20 A. Correct.

21 Q. And when Smithers moved in there, had there been a
22 doctor's office there before?

23 A. I don't recall.

24 Q. I mean, you weren't there.

25 A. But there was some times where patients from that area

1 did mention about a doctor that moved.

2 Q. Okay. But, I mean, there was still, like, some signs and
3 things up in this office from some previous doctor, weren't
4 there?

5 There was something in there for, like, \$20 you
6 could get a physical?

7 A. Yes. Yes, that's correct.

8 Q. That wasn't Dr. Smithers, was it?

9 A. Physical, no.

10 Q. He didn't do a physical for \$20, did he?

11 A. No. No, sir. No, sir.

12 MR. RAMSEYER: All right. If we could go to
13 Exhibit 21, please.

14 BY MR. RAMSEYER:

15 Q. Okay. What's that? Can you identify Exhibit 21?

16 A. That is the deposit box.

17 Q. Is that where you put the cash?

18 A. Correct.

19 Q. Did you have a key to that box?

20 A. Yes.

21 Q. Did you have a key to it?

22 A. Yes.

23 Q. You did.

24 So would you take the cash out at the end of the
25 day?

1 A. To count, yes.

2 Q. To count it.

3 MR. RAMSEYER: Let's go to page 26.

4 BY MR. RAMSEYER:

5 Q. So there's an exam room. That's -- was there one room
6 where there was an exam table?

7 A. Yes.

8 Q. Was it ever used?

9 A. Just to sit on, or lay down, or sleep, by the patients.

10 Q. Is that the room the doctor actually used for exams or
11 visits?

12 A. No, sir.

13 Q. He didn't use that room, did he?

14 A. No, sir.

15 Q. Can you answer out loud, please.

16 A. No, sir.

17 MR. RAMSEYER: Okay. If we could go to 27.

18 BY MR. RAMSEYER:

19 Q. Again, is that another one -- is that another view of
20 that room?

21 A. Yes, sir.

22 MR. RAMSEYER: If you could go to -- go to page --
23 Exhibit 30, please.

24 BY MR. RAMSEYER:

25 Q. Is that what one of the rooms looked like there?

1 A. Yeah. This is -- was in the back of the -- back of the
2 clinic.

3 MR. RAMSEYER: Okay. If we could go to Exhibit 34,
4 please.

5 BY MR. RAMSEYER:

6 Q. Do you recognize this as a backpack that was found in the
7 office of the search? There's a money bag there. You may
8 not, I'm just asking if you remember.

9 A. No, sir.

10 MR. RAMSEYER: If we could go to Exhibit 68, please.

11 BY MR. RAMSEYER:

12 Q. Is that one of the exam rooms?

13 A. Yes, sir.

14 MR. RAMSEYER: If we could go to 69. I'm sorry,
15 we've already seen that one.

16 72, please.

17 BY MR. RAMSEYER:

18 Q. Is that one of the rooms?

19 A. Yes, sir.

20 Q. It's just a little folding table -- excuse me, a folding
21 chair. That's it. Is that right?

22 A. Correct.

23 Q. Okay. Was there any kind of, like, real examinations and
24 real medical work done?

25 A. Not in those rooms, no.

1 Q. Well, in any place?

2 A. Well, not that I can remember besides Dr. Smithers --

3 MR. WILLIAMS: Your Honor, I think it's speculation
4 at this point. If he's working at the front desk, I don't
5 know how he would know whether anything was being done in the
6 back room or not. If he has personal knowledge.

7 THE COURT: I don't know about that. I mean, you
8 can cross-examine him on that. He says not that he remembers.

9 I'll overrule the objection.

10 BY MR. RAMSEYER:

11 Q. Now, the search warrant was executed there on March 7th,
12 2017. Were you there when the search was done?

13 A. Correct.

14 Q. Okay. Did you ever go back to work after that?

15 A. No, sir.

16 MR. RAMSEYER: I'd like to move for admission of
17 Government's Exhibits 16, 17, 18, 21, 26, 27, 30, 68, and 72
18 at this time, Your Honor.

19 THE COURT: They will be admitted.

20 (Government's Exhibit 16 received.)

21 (Government's Exhibit 17 received.)

22 (Government's Exhibit 18 received.)

23 (Government's Exhibit 21 received.)

24 (Government's Exhibit 26 received.)

25 (Government's Exhibit 27 received.)

1 (Government's Exhibit 30 received.)

2 (Government's Exhibit 68 received.)

3 (Government's Exhibit 72 received.)

4 MR. RAMSEYER: Your Honor, would the Court consider
5 a brief recess? I know the Court has something else. There's
6 a few documents I need to retrieve that I don't have.

7 THE COURT: Yes, sir. We will be in brief recess.

8 (Proceedings held in the absence of the jury.)

9 (Proceedings suspended at 2:10 p.m. and resumed at 2:25
10 p.m.)

11 THE COURT: All right. Are you ready?

12 MR. RAMSEYER: Yes, sir.

13 THE COURT: All right. We'll have the jury in.

14 (Proceedings held in the presence of the jury.)

15 MR. RAMSEYER: Thank you, Your Honor.

16 Just for the witness first, if I could show an
17 exhibit.

18 BY MR. RAMSEYER:

19 Q. Do you see Government's Exhibit 1 in front of you on the
20 screen?

21 A. Yes, sir.

22 Q. Okay. And do you recognize that?

23 A. Yes, sir.

24 Q. Okay. And what is that?

25 A. It's the collection form.

1 Q. Okay. Did you have anything to do with it?

2 A. Yes, sir.

3 Q. Okay. Is that something you filled out?

4 A. Correct.

5 Q. All right. The exhibit itself is several pages. Were
6 there -- when you did this, were there a lot of different
7 pages in the book?

8 A. Depending on amount of patients that arrived that day.

9 MR. RAMSEYER: Okay. Your Honor, I'd move for
10 admission of Government's Exhibit 1 at this time.

11 THE COURT: It will be admitted.

12 (Government Exhibit 1 received.)

13 MR. RAMSEYER: So if the jury could see this now,
14 please.

15 BY MR. RAMSEYER:

16 Q. All right. So can you explain what this is for the jury
17 so they can see it now. So at the top where it says
18 "collector", who is that?

19 Oh, wait. It's not up yet. At the top, collector,
20 Peter Bodai. Is that you?

21 A. That is me.

22 Q. It's dated November 29, 2016; do you see that?

23 A. Correct.

24 Q. And then below that it's got different people's names.
25 Amount owed, amount paid, and the balance. Do you see that?

1 A. Yes.

2 Q. So how would that work? When a patient came in or a
3 prescription was sent to them, how would you handle that?

4 A. The amount of patients that come in, I collect the
5 payments and split the -- well, this particular form here is
6 for Dr. Smithers.

7 Q. Okay. So, like, when Sarah Church came in, you put 225
8 in Dr. Smithers's book; is that right?

9 A. Correct.

10 Q. And there would be another book where you put 75 and that
11 was going to Wendell?

12 A. Correct.

13 MR. RAMSEYER: All right. We can go to the next
14 page.

15 BY MR. RAMSEYER:

16 Q. All right. So there at the end where there's, like, blue
17 writing.

18 A. Yes.

19 Q. On page 2 of that, is that your writing?

20 A. No, sir.

21 Q. Okay. Do you know what that is?

22 A. At the end, I assume that's the tallying the total
23 amount.

24 MR. WILLIAMS: Objection as to speculation, unless
25 he has personal knowledge.

1 THE COURT: I'll overrule the objection.

2 What do the figures there show?

3 THE WITNESS: The total amount of patients that
4 arrived that was collected for that day.

5 BY MR. RAMSEYER:

6 Q. The payments made --

7 A. Cash amount.

8 Q. Okay. And if you go back -- well, you can see it on
9 page 2. Over there where it says "amount paid," there's a "C"
10 in parentheses and "CC" in parentheses. What are those?

11 A. The "C" stands for cash and the double "C" stands for
12 credit card.

13 Q. Okay. And you'd circle whichever one it was; is that
14 right?

15 A. That is correct.

16 MR. RAMSEYER: All right. If we can go to
17 Government's Exhibit 2 --

18 And I'd represent there's several pages in
19 Government's Exhibit 1.

20 We'll go to Government's Exhibit 2. Just for the
21 witness.

22 BY MR. RAMSEYER:

23 Q. This is Government's Exhibit 2. Can you identify that?

24 A. It's another payment collection form.

25 Q. Is it pretty much the same kind of form, but just a

1 different day?

2 A. Pretty much a different layout, yes.

3 MR. RAMSEYER: Okay. And if we go to the next page.

4 Next page. Next page.

5 BY MR. RAMSEYER:

6 Q. So you can see there's several pages of those forms; is

7 that right?

8 A. Correct.

9 MR. RAMSEYER: All right. Move for admission of
10 Government's Exhibit 2 at this time, Your Honor.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 2 received.)

13 MR. RAMSEYER: We'd ask that this be published to
14 the jury.

15 All right. Government's Exhibit 3, just for the
16 witness, please.

17 BY MR. RAMSEYER:

18 Q. All right. Can you explain what that is.

19 A. Collection payment.

20 Q. Same kind of form, just a different date; is that right?

21 A. Yes.

22 MR. RAMSEYER: Move for admission of Government's
23 Exhibit 3, Your Honor.

24 THE COURT: It will be admitted.

25 (Government's Exhibit 3 received.)

1 MR. RAMSEYER: Go to Exhibit 4, just for the
2 witness.

3 BY MR. RAMSEYER:

4 Q. Now this one, it's a different day. It's May 16 of '16;
5 do you recognize it?

6 A. It's the same collection form.

7 Q. This one is filled out by somebody else; is that right?

8 A. Correct.

9 Q. Who is it filled out by?

10 A. Wendell Wilson.

11 MR. RAMSEYER: Okay. If you can go to the next
12 page. Next page.

13 BY MR. RAMSEYER:

14 Q. So, again, do you recognize those as forms kept at the
15 Smithers's clinic?

16 A. Same form, yes.

17 Q. And then here we go to one of the pages and it's
18 August 23rd of '16. Is this one of them you filled out?

19 A. Yes.

20 MR. RAMSEYER: Move for admission of Government's
21 Exhibit 4 at this time.

22 THE COURT: It will be admitted.

23 (Government's Exhibit 4 received.)

24 MR. RAMSEYER: Ask that that be published to the
25 jury.

1 I would show Exhibit No. 5 to the witness.

2 BY MR. RAMSEYER:

3 Q. This is dated November 14th of 2016 on the first page of
4 the exhibit. Is this the same type of form?

5 A. Correct.

6 MR. RAMSEYER: Move for admission of Government's
7 Exhibit 5, Your Honor, and ask that it be published to the
8 jury.

9 THE COURT: It will be admitted.

10 (Government's Exhibit 5 received.)

11 MR. RAMSEYER: Show Exhibit No. 6 to the witness.

12 BY MR. RAMSEYER:

13 Q. And I ask, again, is this the same kind of form, this one
14 filled out by Wendell Wilson on November 20th of 2015 as the
15 first page? Is that the same kind of form?

16 A. Yes, sir.

17 MR. RAMSEYER: Move for admission of Government's
18 Exhibit and ask that that be published to the jury.

19 THE COURT: It will be admitted.

20 (Government's Exhibit 6 received.)

21 MR. RAMSEYER: Show the witness Exhibit 7 outside
22 the presence of the jury.

23 BY MR. RAMSEYER:

24 Q. First page of that -- those pages of exhibits is dated
25 11-7-2016. Again, is this you, Peter Bodai, on the collection

1 form?

2 A. That is correct.

3 MR. RAMSEYER: I'd ask that be admitted and
4 published to the jury, Your Honor, Exhibit 7.

5 THE COURT: It will be admitted.

6 (Government's Exhibit 7 received.)

7 MR. RAMSEYER: And Government's Exhibit 8.

8 THE WITNESS: It's the same form, different person.

9 BY MR. RAMSEYER:

10 Q. This is Don Kincell, it says. Is that somebody before
11 you started working there? It's 12-22-15.

12 A. From the looks of the form, yes. Don Kincell. I have no
13 idea who Don Kincell is.

14 MR. RAMSEYER: Okay. Move for the admission of
15 Government's Exhibit 8.

16 THE COURT: It will be admitted.

17 (Government's Exhibit 8 received.)

18 MR. RAMSEYER: I'd ask that this be published to the
19 jury.

20 If we can go to the second page of that, please.

21 Actually, the fourth page of that exhibit, Exhibit 8.

22 Sorry. Go back to Exhibit 7, please.

23 BY MR. RAMSEYER:

24 Q. And did you do one of these for every day you were there,
25 that you were working?

1 A. Yes.

2 Q. That the prescriptions were going out?

3 Just to go back again. So where it says 225 here,
4 that was the amount that went to Dr. Smithers; is that right?

5 A. Correct.

6 Q. And then there was another set of books -- or was there
7 another set of books where the \$75 that went to Wendell went?
8 Or did you just give him a receipt for that?

9 A. Receipt. Carbon receipt.

10 Q. You gave him a carbon receipt. You have to add that up
11 at the end of the day?

12 A. Yes, all that would have been added up.

13 Q. Well, what I'm asking you is, at the end of the day, so
14 William Atkins, according to this form paid 225. Okay? Do
15 you see that?

16 A. Yes, sir.

17 Q. But he really paid 300; right?

18 A. Correct.

19 Q. So the money that went in the cash box at the end of the
20 day, was it 300 or 225? Did you separate it out right then?

21 A. No, it was at the end of the shift.

22 Q. So the 300 would go into the cash box?

23 A. Correct.

24 Q. Then at the end of the day it would be divvied up between
25 Dr. Smithers and Wendell?

1 A. Correct.

2 Q. Okay. All right.

3 Now, you indicated that Dr. Smithers kept a blank --
4 I mean some prescriptions that were blank but pre-signed; is
5 that right?

6 A. Correct.

7 Q. And where was that kept?

8 A. In Wendell's desk.

9 MR. RAMSEYER: Okay. May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 MR. RAMSEYER: I'm going to show you Government's
13 Exhibit 86 and ask you if that's exactly what that is.

14 THE WITNESS: That is correct.

15 MR. RAMSEYER: Okay. Move for admission of
16 Government's Exhibit 86, Your Honor. This is a pre-signed --

17 MR. WILLIAMS: Can I see it first?

18 MR. RAMSEYER: Oh, yes.

19 Your Honor, these are pre-signed prescription pads
20 that were found at the time of the search.

21 THE COURT: It will be admitted.

22 (Government Exhibit 86 received.)

23 MR. RAMSEYER: I'd like to publish that to the jury,
24 if we could use the ELMO, please.

25 ///

1 BY MR. RAMSEYER:

2 Q. And I'm going to ask you, Mr. Bodai, it's in a plastic
3 bag. Can you look and see there's a tablet there, there's
4 more than just one prescription?

5 A. That is correct.

6 Q. Now, was there some concern in the clinic that patients
7 might be wearing a wire?

8 A. Not that I'm aware of.

9 MR. RAMSEYER: Can I show this to the witness,
10 Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. RAMSEYER:

13 Q. This is Government's Exhibit 49. Would you just read
14 that to yourself.

15 Do you recognize the handwriting on that?

16 A. Looks like Dr. Smithers's handwriting.

17 Q. Okay. And you worked there quite some time. Did you
18 become familiar with his handwriting?

19 A. Correct.

20 MR. RAMSEYER: Your Honor, I'd move for admission of
21 Government's Exhibit's 49 at this time.

22 MR. WILLIAMS: Your Honor, we would object. I don't
23 think there's any name or anything on this. I certainly think
24 that he's not an expert in handwriting analysis.

25 THE COURT: Well, beyond that, I don't know that

1 there's been any connection with that exhibit to the clinic.

2 I mean, it just exists out in the air.

3 MR. RAMSEYER: Yes, Your Honor. The defense
4 indicated they weren't going to object to items taken from the
5 search without us bringing the witnesses to talk about it.

6 THE COURT: Is that correct?

7 MR. WILLIAMS: Your Honor, we had agreed to that.
8 But I think that certainly this is -- this is a document I
9 think he's testifying that is in my client's handwriting, and
10 I don't think he's certainly qualified to testify to this.

11 THE COURT: I think the lay testimony to handwriting
12 is admissible. Based on the stipulation that it was found at
13 the clinic in connection with the search, I will admit it.

14 (Government Exhibit 49 received.)

15 MR. RAMSEYER: May I publish it to the jury,
16 Your Honor?

17 THE COURT: You may.

18 MR. RAMSEYER: This is Government's Exhibit 49.

19 BY MR. RAMSEYER:

20 Q. Mr. Bodai, does it say, "For suspected wires: WO,"
21 meaning without, "verification of your issues, I cannot help
22 you."

23 Do you see that?

24 A. Yes, sir.

25 Q. Was Darryl Williams one of the patients there?

1 A. I'm sorry?

2 Q. Was Darryl Williams a patient during the time period you
3 worked there? He may not have been.

4 A. I don't know.

5 Q. You don't remember?

6 A. I don't remember, there was so many patients.

7 MR. RAMSEYER: Your Honor, at this time I'd like to
8 move to introduce two other pieces of evidence that were found
9 in the search. That would be Government's Exhibits 87 and 88.

10 THE COURT: Very well, they will be admitted.

11 (Government's Exhibit 87 received.)

12 (Government's Exhibit 88 received.)

13 MR. RAMSEYER: Move to publish those to the jury.

14 BY MR. RAMSEYER:

15 Q. 87 says on a sticky pad, "Is Darryl Williams wearing a
16 wire?"

17 And 88 -- do you see that, Mr. Bodai?

18 A. Yes, sir.

19 Q. Does it appear to be license plates information?

20 A. What I'm looking at, yes.

21 Q. It says "DEA?" Do you see that?

22 A. Yes.

23 Q. Does that refresh your memory? Was there any talk in the
24 clinic or did you hear people, Wendell, Dr. Smithers, somebody
25 talking about concerns?

1 A. Wendell, of course, he was open minded, so he -- he spoke
2 out loud. So he mentioned a few things like cameras on the
3 outside of the building or on the pole. I've never seen the
4 Post-it note.

5 Q. I understand you didn't see the Post-it note. But was
6 there talk about a concern that law enforcement may be
7 watching?

8 A. Concern, yes.

9 Q. And that patients might be wearing wires?

10 A. Not about the patients and being wired.

11 Q. But you'd heard about under surveillance from --

12 A. Under surveillance, yes.

13 MR. RAMSEYER: Thank you, sir.

14 THE COURT: All right. Cross-examination?

15 **CROSS-EXAMINATION**

16 BY MR. WILLIAMS:

17 Q. Good afternoon, Mr. Bodai. How are you?

18 A. Good.

19 Q. Okay. Mr. Bodai, you and -- Dr. Smithers hired you back
20 when you first kind of moved to Martinsville, didn't he? He
21 hadn't been there very long, had he?

22 A. Repeat that again for me.

23 Q. Dr. Smithers hadn't been in Martinsville very long before
24 he hired you.

25 A. Hasn't been there long?

1 Q. He hadn't been in Martinsville very long practicing when
2 he hired you; correct?

3 A. Yes.

4 Q. And so you came in to work for him and you developed a
5 pretty good relationship with him, didn't you?

6 A. Yes.

7 Q. You and Dr. Smithers got along?

8 A. Yes.

9 Q. And he treated you well, didn't he?

10 A. Yes.

11 Q. Okay. And do you recall him giving you the option of
12 being a W-2 employee or an independent contractor? Do you
13 recall him giving you that option?

14 A. Just being a contractor, independent contractor.

15 Q. You don't recall him saying you could be a W-2 employee
16 if you wanted to?

17 A. No.

18 Q. Is it possible that happening and you just don't remember
19 it?

20 A. All I remember is it being as an independent contractor
21 since there was no way of being an employee.

22 Q. That's what it was. It's been a while, hasn't it?

23 A. Correct.

24 Q. Now, Dr. Smithers basically allowed you -- there weren't
25 that many rooms that were needed in the clinic, were there?

1 You didn't need that many waiting rooms, did you?

2 A. Waiting rooms were just for the emp -- for the patients.

3 Q. Right. I misspoke there. You didn't have any need for
4 many examination rooms, did you?

5 A. No, sir.

6 Q. You only had Wendell who would do the drug testing;
7 right?

8 A. Correct.

9 Q. And he had an area; right?

10 A. Correct.

11 Q. Okay. And then Dr. Smithers would be taking patients
12 back one at a time; right?

13 A. Correct.

14 Q. Okay. So there weren't needs for having all of these
15 rooms filled with beds and everything else, were there?

16 A. Correct.

17 Q. You could only see one patient at a time, pretty much;
18 right?

19 A. Correct.

20 Q. Now, with respect to this, Dr. Smithers was good to you
21 in the fact that he let you stay back there in one of the
22 rooms, didn't he?

23 A. Yes.

24 Q. You had a bed and everything back there?

25 A. Inflatable bed, yes.

1 Q. He didn't charge you any rent or anything to stay back
2 there, did he?

3 A. No.

4 Q. Okay. And so this was a situation where he -- you know,
5 you-all got along well and everything, didn't you?

6 A. Yes.

7 Q. Everybody kind of got along well in the office, didn't
8 they?

9 A. Yes.

10 Q. Now, one of the things that you had said earlier, you had
11 stated, I think, earlier that maybe Dr. Smithers wasn't there
12 but maybe a day or two a week, is that what you said?

13 A. Yes.

14 Q. Okay. Dr. Smithers was there virtually every day, wasn't
15 he? Except on rare occasions that he wouldn't there? That he
16 wouldn't come in at some point?

17 A. On rare occasions.

18 Q. Yeah. So he would be there most days; right? He would
19 be in the office most days seeing patients, wouldn't he?

20 A. Most days, but he'd be late.

21 Q. Okay. And on the days that he wasn't, the patients that
22 were -- that he was seeing whereby he wasn't there and doing,
23 I think you said tele-medicine, is that what you called it?

24 A. FaceTime.

25 Q. Face timing, okay. That he would FaceTime. Those were

1 the lower-risk patients, weren't they?

2 A. I can't tell you, I don't know.

3 Q. Were you out front most of the time?

4 A. Most of the time in the front, yes.

5 Q. Okay. And so you wouldn't know what goes on most of the
6 time back in the back rooms and everything while the patients
7 are being seen; right?

8 A. Unless I'm cleaning up, being a janitor.

9 Q. And so as far as any testimony where you said about
10 things not happening in the back, you really don't know what
11 happened in the back.

12 A. I don't know what's going on behind closed doors.

13 Q. Okay. And so whatever treatment is going on back there
14 with Dr. Smithers, you really don't know whether or not --
15 what exams are being done and everything else; correct?

16 A. I did not witness that.

17 Q. Okay. And Dr. Smithers was good to people, wasn't he?

18 A. Yes.

19 Q. I mean, he -- the patients liked him, didn't they, for
20 the most part?

21 A. For the most part, yes.

22 Q. I mean, any doctor is going to have certain patients that
23 don't get along with or whatever.

24 A. Right. Yeah.

25 Q. But the patients liked him and they got along with him,

1 didn't they?

2 Okay. And he liked them back?

3 MR. RAMSEYER: Objection, Your Honor.

4 THE WITNESS: Yeah, well --

5 THE COURT: Well to the extent the witness knows,
6 I'll overrule the objection.

7 MR. WILLIAMS: I'll withdraw that question, Judge.

8 BY MR. WILLIAMS:

9 Q. Dr. Smithers trusted you with a lot of things, didn't he?

10 A. Yes.

11 Q. Okay. He trusted you to handle the money?

12 A. (Nods head.)

13 Q. Trusted you --

14 A. I was a reliable employee.

15 Q. Any time you're at a medical facility, he trusts you to
16 keep HIPAA?

17 A. HIPAA compliance.

18 Q. Compliance.

19 A. Patient's file charts, yes.

20 Q. And Dr. Smithers was a very trusting person, wasn't he?

21 A. Yes.

22 Q. Just in general.

23 A. Yes.

24 Q. He liked to find the good in people, didn't he?

25 A. Yes.

1 Q. Now, Dr. Smithers would have a group of -- let me back
2 up. What was your role at the office? You said you were kind
3 of the front desk person --

4 A. Receptionist and also the cleaning.

5 Q. Okay. You did cleaning as well?

6 A. Yeah.

7 Q. Okay. Did you help -- when a person would come in, would
8 you help them -- would you hand them forms and stuff to fill
9 out?

10 A. Yes. Assessment forms, yes.

11 Q. Okay.

12 A. Demographics, what not.

13 Q. Was one the SOAPPR forms, do you recall those?

14 A. Is that the questionnaire, as to questions given to
15 the --

16 Q. There was a pain inventory thing, I think that's what
17 Dr. Smithers went over them with.

18 A. Okay.

19 Q. This would be like a list of questions or something when
20 they first came in --

21 A. Psychological questions?

22 Q. Yes.

23 A. Yes, that was included as the assessment for the --

24 Q. Did you help patients fill that out or not?

25 A. They filled that out.

1 Q. They filled that out themselves?

2 A. They had to fill that out.

3 Q. So you would hand that to them and they handed it back to
4 you?

5 A. Correct.

6 Q. And that was one of your responsibilities at the office?

7 A. Correct.

8 Q. Did you understand what that form was for? Did
9 Dr. Smithers ever talk to you about you what that form was for
10 or anything?

11 A. Logical questions?

12 Q. Yeah.

13 A. To determine if the patient is, I don't know --

14 Q. Is it to determine if they'd be a good candidate for
15 opioids?

16 A. Yes, candidate. That's the word. Yeah. Yeah.

17 Q. So it's a screening sort of type system, isn't it?

18 Try to make sure you're not handing opiates out to
19 somebody who wouldn't be -- wouldn't need 'em; right?

20 A. Screening process, right.

21 Q. And did you do that with each and every patient?

22 A. Handed every patient, yes. Every patient needed to fill
23 that out.

24 Q. And they would fill that out initially, right? When they
25 were first coming in?

1 A. Correct. New patients, yes. And even returning
2 patients.

3 Q. Now, I think you had testified earlier that you don't
4 know what happens back in the exam room and stuff; right?

5 A. Not so much, no.

6 Q. So anything you would have said about what was going
7 on --

8 THE COURT: Yes, sir, let's not repeat. I think we
9 went through that.

10 MR. WILLIAMS: Okay.

11 BY MR. WILLIAMS:

12 Q. Dr. Smithers took a lot of time with his patients, didn't
13 he? Especially on the first visit.

14 A. Correct.

15 Q. Okay. How long would he be in there with a patient?

16 A. I have to give a specific time frame?

17 Q. Just average.

18 A. Average?

19 Q. Yeah. If you had to pick an average, what?

20 A. Anywhere an hour, two hours.

21 Q. Okay. So he would take a lot of time to meet with them,
22 talk with them, things like that, during that first initial
23 visit; correct?

24 A. Yes, sir.

25 Q. Okay. And you were out front at the time, so you don't

1 really know what probably --

2 A. Just know what's going on in the reception area.

3 Q. Right.

4 Now I think they had introduced a lot of the money
5 forms in there just a minute ago; is that right?

6 Where you would take the money, that was another one
7 of your jobs.

8 A. Yes.

9 Q. Okay. Now a lot of those forms there were still balances
10 owing; is that right?

11 A. Owing?

12 Q. There were still balances owing. In other words, the
13 person would have a fee for the visit and then they would only
14 pay part of it; right?

15 A. Right. Right.

16 Q. Okay. So it would be like if it was 225 and they paid
17 125, it would show a balance owing of, like, \$100; right?

18 A. Right. Whatever was the remaining they owed. So
19 delinquent accounts.

20 Q. Okay. And Dr. Smithers never turned anybody away when he
21 was doing those accounts -- or because they didn't have money,
22 did he?

23 A. That is correct. Yes.

24 Q. So even if they owed him upwards of money, he would still
25 go ahead and see 'em.

1 A. It was all added up into a -- into that cash payment
2 sheet, or form.

3 Q. All right. Now, I think you said Wendell was there in
4 the office; is that right?

5 A. That is correct.

6 Q. Okay. And what was Wendell's role?

7 A. Counting prescription medicine.

8 Q. Okay.

9 A. Counting narcotic -- counting and drug --

10 Q. Was he kind of a compliance auditor, is that what that
11 means?

12 A. Compliance, yeah.

13 THE COURT: Let him finish the answer before you
14 start the next question, please.

15 MR. WILLIAMS: I'm sorry. I'm sorry, Judge.

16 BY MR. WILLIAMS:

17 Q. Do you understand, would he be kind of a compliance
18 officer?

19 A. That is correct.

20 Q. Okay. And so he was -- when people would come in, his
21 job in the facility was he would bring them in, talk to 'em,
22 drug test them; is that right?

23 A. That's correct. That's --

24 Q. He would conduct pill counts.

25 A. Pill count, yes.

1 Q. And why was this done in Dr. Smithers's office? Was it
2 to try to help out to catch those that were abusing drugs?

3 A. Yes. That was part of the process.

4 Q. So you would do drug testing because if somebody comes in
5 and there's nothing in their system, it would cause concern
6 over certain things. And if they came in with other
7 prescriptions in their thing -- in their system, it would also
8 raise concerns; right?

9 A. Well, the risk, yeah. Risk to patient is on there.

10 Q. So this was a process Dr. Smithers had in place there in
11 the office; right?

12 A. I'm sorry?

13 Q. He had in place to try to check.

14 A. Wendell?

15 Q. Yeah. He had Wendell in there to try to catch it.

16 A. Yes, that was his responsibility.

17 Q. Okay. Now, did you ever see Dr. Smithers himself -- you
18 never saw him with any pills himself, did you?

19 A. Not that I've witnessed.

20 Q. Never saw him where you thought he would be under the
21 influence of anything?

22 A. Not that I witnessed.

23 Q. Never saw him hand out any kind of a pill or anything to
24 a patient or anything?

25 A. Physically?

1 Q. Yeah.

2 A. Not that I've witnessed.

3 Q. Now, Dr. Smithers would do these FaceTime chats; is that
4 correct?

5 A. Yeah.

6 Q. And these would be patients that were coming in and
7 Dr. Smithers would FaceTime them over the phone. Wendell
8 would get him on the phone; is that correct?

9 A. Yes.

10 Q. And did that happen while -- did it happen often?

11 Did it happen all the time when he was gone from the
12 office?

13 A. Not all the time.

14 Q. Okay. Large majority of the time?

15 A. It was a majority.

16 Q. But now were you there all the time to see those or would
17 they go into a room?

18 A. They would go into a room.

19 Q. Okay. Now, how many patients were removed by
20 Dr. Smithers, do you know?

21 A. Removed? Can you --

22 Q. That were kicked out of the program for violating either
23 a failed screen or whatever.

24 A. Yes, they were declined --

25 Q. Quite a few?

1 A. -- service.

2 Yeah. I'm sure there were records of that.

3 Q. Okay. And was there times when you would see patients
4 return medications to Dr. Smithers? Do you recall anything of
5 that?

6 A. Return?

7 Q. Yeah. Their medicine wasn't working for them or it
8 was -- something was causing them they didn't like or
9 something about it?

10 A. Would they have after effects?

11 Q. Yeah.

12 A. Yes.

13 Q. Would they return it back to the office? Did you ever
14 see --

15 THE COURT: They would bring the pills back to
16 Dr. Smithers?

17 MR. WILLIAMS: Right.

18 THE WITNESS: The medication which --

19 MR. WILLIAMS: Right.

20 THE WITNESS: -- Wendell would, you know, check to
21 see if everything was counted for.

22 BY MR. WILLIAMS:

23 Q. Okay. So they would -- let me rephrase the question. I
24 think I didn't -- I think I gave you a pretty poor question
25 there.

1 A. Yeah.

2 Q. Were there times when patients wouldn't be able to take
3 the medicine that they were supposed to? Something was wrong
4 with it, it made them feel bad, or it made them drowsy, they
5 didn't like it, it caused a reaction somewhat, and they would
6 return the medicine back to the office? Did you see times of
7 that?

8 A. There -- well, I haven't physically seen them bring it to
9 Dr. Smithers.

10 Q. Okay. Would they do it through Wendell sometimes?

11 A. Phone call -- yes, we get phone calls.

12 THE COURT: Now let me ask you this. They would
13 bring in their pills for pill counts; right?

14 THE WITNESS: For the pill counts.

15 THE COURT: We're not talking about that.

16 THE WITNESS: Okay.

17 THE COURT: He's asking you if the patient didn't
18 like the medicine, said I don't like this medicine, would he
19 bring -- he or she bring the medicine back? Do you know
20 anything about that?

21 THE WITNESS: I haven't witnessed anything. But if
22 that responsibility would have to be with Wendell.

23 THE COURT: But you don't know anything about that?

24 THE WITNESS: I don't know anything about that.

25 MR. WILLIAMS: That was my question, whether you

1 knew anything about that or not.

2 THE WITNESS: Okay.

3 MR. WILLIAMS: May I have just a moment with my
4 client?

5 BY MR. WILLIAMS:

6 Q. Did Dr. Smithers relate to you or did he ever talk to you
7 about wanting to do tele-medicine? Starting to do more
8 tele-medicine, do you recall that?

9 A. Can you describe tele-medicine?

10 Q. Over the FaceTime or anything like that.

11 MR. RAMSEYER: Objection. That would be hearsay,
12 Your Honor.

13 THE COURT: I'll sustain the objection.

14 BY MR. WILLIAMS:

15 Q. Now, you and Ms. Kovalski were involved in a
16 relationship; right?

17 A. That is correct.

18 Q. The Government asked you that earlier, okay.

19 A. Yes.

20 Q. And obviously you didn't tell Dr. Smithers anything at
21 all about that; correct?

22 A. Correct.

23 Q. Okay. And Dr. Smithers was -- had no idea of what was
24 going on.

25 MR. RAMSEYER: Objection, Your Honor.

1 MR. WILLIAMS: I'll withdraw the question.

2 THE COURT: All right.

3 MR. WILLIAMS: I think that's all, Your Honor.

4 THE COURT: All right.

5 Any redirect?

6 MR. RAMSEYER: Very briefly, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. RAMSEYER:

9 Q. Sir, you mentioned cleaning. So you were at this medical
10 office, patients are coming in with medical issues. Did you
11 have -- was there a janitor?

12 A. No, sir.

13 Q. Were the offices ever cleaned?

14 A. By me.

15 Q. Did you really clean 'em?

16 A. Well, the trash.

17 Q. You took the trash out.

18 A. Vacuum.

19 Q. Did you ever clean it? Like sanitize wipes or anything
20 on the chairs or anything like that?

21 A. No.

22 Q. The whole time you worked there?

23 A. (Shakes head.)

24 Q. Is that a no?

25 A. No, sir.

1 Q. Okay. And you talked about -- he asked you about this
2 screening to drug test people. So you did some of that;
3 right?

4 A. Yes.

5 Q. Some of the drug testing.

6 A. For a very short time.

7 Q. Okay. And were the drug tests observed? Like, did you
8 watch people provide the urine sample to make sure it was
9 really their urine, they were really doing it?

10 A. If I was in the facility? Or the bathroom?

11 THE COURT: No, the question is when you drug tested
12 people.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. So you got to do that, you would
15 get urine samples from them.

16 THE WITNESS: Yes.

17 THE COURT: Did you observe them urinating in a cup?

18 THE WITNESS: On -- just the males. And if they're
19 a high risk.

20 BY MR. RAMSEYER:

21 Q. So the policy of the office was that the only people that
22 got witnessed were high-risk people; is that right?

23 A. Correct.

24 Q. Okay. And were there any women working at the facility?

25 A. No, sir.

1 Q. So what if they're a high-risk woman, would they be
2 observed?

3 A. No, sir.

4 Q. Why not? What kind of system is that? High-risk people
5 need to be tested, but not women.

6 A. But women, no. No.

7 Q. Okay. And briefly I want to show you Government's
8 Exhibit 32, just for the witness.

9 And while she's doing that, sir, after you left
10 Dr. Smithers, where did you go to work?

11 A. I collected unemployment afterwards.

12 Q. Okay. And then where did you go to work after that?

13 A. Papa John's.

14 Q. Okay. Is that where you work now?

15 A. To this day, currently, yes.

16 Q. And Government's Exhibit 32, is that the room you slept
17 in at the office? Are you -- is that showing?

18 A. There we go. Yes.

19 MR. RAMSEYER: We'd move for admission of
20 Government's Exhibit 32, Your Honor.

21 THE COURT: It will be admitted.

22 (Government's Exhibit 32 received.)

23 MR. RAMSEYER: Ask that that be published to the
24 jury.

25 That's all my questions. Thank you.

1 THE COURT: Yes, sir.

2 MR. WILLIAMS: Just a couple more questions, here.

3 **RECROSS-EXAMINATION**

4 BY MR. WILLIAMS:

5 Q. Mr. Bodai, the notes that you saw earlier, you really
6 don't have any idea who wrote those notes, do you?

7 A. The notes?

8 Q. Yes. The notes that the Government introduced a few
9 minutes ago, you really don't have any idea who wrote those
10 notes, do you?

11 A. Well, there's no name stated, but I do know the --

12 Q. It appears --

13 A. It appears -- yes.

14 Q. -- similar to his writing?

15 THE COURT: Wait. Again --

16 MR. WILLIAMS: I'm sorry.

17 THE COURT: So you ask him a question, then he'll
18 answer, then you can ask him another question. So --

19 MR. WILLIAMS: I'm sorry.

20 THE COURT: So what is your question?

21 BY MR. WILLIAMS:

22 Q. The notes do not have a name on them; correct?

23 A. Correct.

24 Q. And you would be guessing to say that it would be
25 Dr. Smithers's writing.

1 A. Correct.

2 THE COURT: Well, are you guessing? Or do you know
3 Dr. Smithers's handwriting?

4 You testified before that it appeared to you that
5 these -- this handwriting was Dr. Smithers's.

6 THE WITNESS: Dr. Smithers.

7 THE COURT: Is that right?

8 THE WITNESS: Correct.

9 THE COURT: Well, is that true?

10 THE WITNESS: Yes, that's true.

11 THE COURT: Okay.

12 BY MR. WILLIAMS:

13 Q. Now, with Ms. Kovalski, the -- she was actually -- she
14 had told you she was giving her pills away, did she not?

15 A. Yes.

16 Q. Okay. And that's what you didn't tell to Dr. Smithers.
17 You didn't reveal that to Dr. Smithers; correct?

18 A. Correct.

19 Q. And based upon that, she had told you that she suspected
20 her mom, too, didn't she? Did she mention anything about her
21 mother?

22 A. Correct.

23 Q. Okay. And you didn't mention any of that to Dr. Smithers
24 either, did you?

25 A. Correct.

1 Q. Okay. Now, did Ms. Kovalleski tell you she actually had
2 real pain in her back and legs? Did she tell that you?

3 A. Real pain?

4 Q. Yes. She had actual pain in her back and legs during the
5 time you-all were involved?

6 A. Legs. That's the only thing I can think of is legs.

7 Q. Okay. Do you recall testifying before the grand jury on
8 September 12th, 2017? Do you recall testifying before the
9 grand jury in September of 2017 --

10 A. Was it --

11 Q. -- here in Abingdon?

12 A. Yes.

13 Q. Okay. If I show you a copy of the transcript of that to
14 try to refresh your recollection, would that help you?

15 THE COURT: Well, go ahead and show it to him.

16 MR. WILLIAMS: Okay.

17 Don't read it out loud, just look at it --

18 Read it to yourself.

19 THE COURT: Okay. The question to you, sir, is does
20 that refresh your recollection as to any of the questions that
21 Mr. Williams asked you?

22 THE WITNESS: That is correct, yes.

23 THE COURT: Okay.

24 BY MR. WILLIAMS:

25 Q. So the only -- so Ms. Kovalleski indicated to you that she

1 actually had real pain in her legs and lower back; right?

2 A. Yes.

3 Q. Okay. And you realize the danger that could have been
4 caused by keeping that from Dr. Smithers?

5 A. Correct.

6 Q. And Ms. Kovalski put everyone in grave danger, didn't
7 she? By revealing that to you, didn't she?

8 A. Put everyone in danger?

9 Q. Yeah. She put a lot of people in danger, didn't she?
10 Could have cost you your job. You were willing to go and tell
11 her when drug screens were so that she could avoid that;
12 correct?

13 A. Helping her with Google.

14 Q. Okay. But you told her when the drug screens were
15 coming, didn't you?

16 A. With the dates, yes.

17 Q. So you knew she could be able to be prepared for it on
18 that time.

19 A. Yes.

20 MR. WILLIAMS: All right. No further questions.

21 MR. RAMSEYER: Nothing further, Your Honor.

22 THE COURT: All right. Thank you, sir.

23 If you'll step down, please.

24 May this witness be excused?

25 MR. RAMSEYER: We'd ask he be subject to recall,

1 Your Honor.

2 THE COURT: All right. Sir, you can leave now, but
3 it may be necessary for you to come back on a different day.
4 If so, if you're asked, I direct you that you have to come
5 back. All right?

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. Counsel, we're going to end at this
9 time.

10 Ladies and gentlemen, I have another matter that I
11 need to take up, so we're going to stop this case at this
12 time. And it will be necessary for you to return tomorrow so
13 we can begin at 9:00. And you can leave your notebooks. If
14 you would, leave them in the jury room so they'll be safe and
15 confidential there.

16 And drive carefully, have a good evening, and we'll
17 see you tomorrow morning at 9:00.

18 If you'll follow the bailiff's out, please.

19 All right. Mr. Bailiff, if you'll take the jury
20 out, please.

21 MR. RAMSEYER: Your Honor, if I may, I want a
22 quick -- have the jury stay for just a moment, if we could.

23 THE COURT: Okay.

24 MR. RAMSEYER: I wanted to move a couple items into
25 evidence, if I could, possibly.

1 THE COURT: If you could stand there, ladies and
2 gentlemen.

3 MR. RAMSEYER: I apologize. DWi-1000 and RiJ-1000,
4 those are text messages involving Darryl Williams, certain
5 text messages of Darryl Williams and Rick Jessie.

6 THE COURT: All right.

7 MR. WILLIAMS: We've agreed on that I think,
8 Your Honor.

9 THE COURT: All right. They will be admitted.

10 (Government's Exhibit DWi-1000 received.)

11 (Government's Exhibit RiJ-1000 received.)

12 THE COURT: All right. Thank you, ladies and
13 gentlemen.

14 (Proceedings held in the absence of the jury.)

15 THE COURT: All right. Counsel, is there anything
16 we need to take up before we recess this case until tomorrow
17 morning?

18 MR. RAMSEYER: No, Your Honor.

19 MR. WILLIAMS: No, Your Honor.

20 THE COURT: All right. Thank you, counsel.

21 And we will recess court at this time.

22 (Proceedings concluded at 3:08 p.m.)
23
24
25

REPORTER'S CERTIFICATE

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 214 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 6th day of June, 2019.

S/Donna Prather

DONNA J. PRATHER, RPR, CRR, CBC, CCP
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